

PALM BEACH COUNTY
BOARD OF ADJUSTMENT
PUBLIC HEARING

Thursday, January 21, 1999
9:00 a.m. - 1:35 p.m.
100 Australian Avenue
West Palm Beach, Florida

REPORTING:
MICHELLE S. LANG

A T T E N D E E S

CHELLE KONYK, CHAIRMAN

GLENN WICHINSKY

ROBERT BASEHART

HAROLD COHEN

GILBERT MOORE

STANLEY MISROCH

STEVEN RUBIN

JON MACGILLIS

DAVID CUFFE

LAURA BEEBE, ESQUIRE

PETER GOUSIS

I N D E X

<u>ITEM NO.</u>	<u>PAGE</u>
BOFA 9800087	X
BOFA 9800093	X
BOFA 9800100	X
BOFA 9900001	X
BATE 9900006	X
<u>CERTIFICATE OF REPORTER</u>	<u>X</u>

P R O C E E D I N G S

CHAIRMAN KONYK: I'd like to welcome you to the January 21, 1999 Board of Adjustment meeting and start with the roll call and declaration of the quorum.

MS. MOODY: Mr. Harold Cohen?

MR. COHEN: Here.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Here.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Here.

MS. MOODY: Mr. Gilbert Moore?

MR. MOORE: Here.

MS. MOODY: Mr. Raymond Puzzitiello?

(NO RESPONSE)

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: Here.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Here.

MS. MOODY: Ms. Chelle Konyk?

MS. KONYK: Here.

MS. MOODY: We have a quorum.

MS. KONYK: Okay.

I have before me proof of publication in the Palm Beach Post on January 3, 1999.

The next item on the agenda is the remarks of the Chairman of the Board. The county attorney has asked me to have the members of the Board disclose at this time if there's been any exparte communication on any of the issues that are brought before us. Does anybody have anything to disclose?

MR. BASEHART: Madam Chairman, I had discussions with the applicant on number five which is the BOFA 9800100 and on number three BOFA 9800093. And for the record my discussions with those individuals had -- did not change my opinion on the matters.

MR. COHEN: I want to disclose a letter I received from Norman Find.

CHAIRMAN KONYK: I think everyone got that letter.

MR. WICHINSKY: Madam Chair, I received correspondence on items three, four and five on the agenda today. There has been no communication from me. But I did receive correspondence referencing their items.

CHAIRMAN KONYK: Anyone else?

MR. RUBIN: I received the January 12, 1999 letter from Kevin Rathery regarding 98-87. Staff has a copy and also received a cover letter and a memorandum dated January 4, 1999 from Dennis Koehler, Esquire regarding BOFA 98-100.

CHAIRMAN KONYK: And I also received both of those publications.

MR. BASEHART: So did I.

MR. COHEN: Same here.

CHAIRMAN KONYK: But I didn't read mine, just for the record.

Okay, for those of you who are not familiar with how the Board conducts its business, the agenda is divided into two parts the consent agenda and the regular agenda. If your item is on the consent agenda it has been recommended for approval by staff either with or without conditions. The applicant has agreed with the conditions, the Board members have read the report and do not feel the item warrants a full hearing and there is not any opposition from the public. If your item is pulled from the consent it will be reordered to the regular agenda. Items on the regular agenda are items that have either been recommended for denial by staff or the applicant does not agree with the conditions that staff has recommended or there's opposition from the public or a Board member feels the item warrants a full hearing.

The next item on the agenda is the approval of the minutes. Apparently we had some trouble -- the court reporter had some trouble with her equipment last month and Glenn's noticed that there are some errors in the minutes that he wanted to bring forward.

MR. WICHINSKY: Just two items that I noticed on page 13 of the written transcript, second paragraph where I was speaking regarding the quorum, the third line down should read with a bare quorum, B-A-R-E, instead of a fair quorum. And the other

item I noticed was on page 35, the speaker I believe was Rabi Brander, was it B-R-A-N-D-E-R, not Granger. I believe that was his name but just for clarity. That's all I saw.

CHAIRMAN KONYK: Anybody else have any corrections?
(NO RESPONSE)

CHAIRMAN KONYK: Is someone prepared to make a motion to approve the minutes with those changes?

MR. WICHINSKY: So moved.

CHAIRMAN KONYK: Motion by Mr. Wichinsky, second by?

MR. MISROCH: Second.

CHAIRMAN KONYK: Mr. Misroch, all those in favor?
(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously.

The next item on the agenda is remarks of the zoning director.

MR. MacGILLIS: I'd just like to make a comment on the memo that staff sent to you last month regarding the quorum and the voting. The only response we got back I believe was Mr. Rubin saying he opposed the code revision to have it -- for three affirmative votes.

CHAIRMAN KONYK: I didn't get the memorandum.

MR. MACGILLIS: All it was the memo was a follow up of what your --

CHAIRMAN KONYK: Well most of us had already responded here.

MR. MACGILLIS: Right, there were several board members who weren't here. So we sent it out to every board member, and I asked that within I believe it was ten days from receiving the letter if you could contact us if you had opposition. If you didn't -- if we didn't hear back from you we assumed that you were okay with amending the ULDC to allow affirmative vote, three instead of the current four.

MR. WICHINSKY: I believe it was a simple majority.

CHAIRMAN KONYK: Simple majority.

MR. MACGILLIS: Simple majority, I'm sorry, simple majority vote. We have talked to the code revision staff, the commission to advertise would be January 28, 1999. The full CTF would hear this on February the 2nd and again on February the 9th. The first reading by the Board of County Commissioners would be on February 23rd and the final adoption

would be March 16th. So that would be one more hearing at the February 18th meeting we have to make sure we have six people here to have --

CHAIRMAN KONYK: Right, and it's only an issue if we have five or less.

MR. MACGILLIS: Correct.

CHAIRMAN KONYK: Anything else?

MR. MACGILLIS: The only other comment if we did provide you because there was -- some of the board members weren't here several items were postponed last month and there was testimony taken on several of the cases and the Board directed staff to make sure you had the minutes so you could review those. On one of the cases it was continued and there's some testimony by surrounding residents who couldn't come again. We'll remind you when that comes up again but everyone should have in front of you the backup minutes from that last hearing.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: Those are the only comments.

CHAIRMAN KONYK: Are there any changes to the agenda?

MR. MACGILLIS: Yes, inadvertently the two subdivision items weren't put on the agenda. So SD-93 which you actually got the backup material but it's not in your agenda. They're asking for a thirty day postponement on that item. So that would be February the 18, 1999, at nine o'clock.

CHAIRMAN KONYK: Is the applicant present?

MR. MACGILLIS: Just for your information the engineering division -- David can comment if he wants does support a 30 day postponement by right.

CHAIRMAN KONYK: It's by right, isn't it?

MR. RATHERY: Good morning, Kevin Rathery, we are requesting a 30 day postponement to the February 18th meeting.

CHAIRMAN KONYK: And you'll be ready then?

MR. RATHERY: We're ready now I just wanted to give you an extra 30 days.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: The other change to the agenda would be under the consent agenda. I'd like to add another item. Item three which would be the subdivision item 92, SD-92. Which is the petition of Newport Bay Club, Inc. who's requesting a variance from the lake slopes. The applicant is here there are four conditions which they apparently agree with so that can go on the consent agenda.

The only thing I want to change is --

AUDIENCE MEMBER: I'm not sure if this is appropriate but is the Benedetto matter coming up at this moment?

MR. MACGILLIS: No.

CHAIRMAN KONYK: No.

AUDIENCE MEMBER: I wish to speak to it when it is.

CHAIRMAN KONYK: We'll let you know.

MR. MACGILLIS: Those are the only changes.

CHAIRMAN KONYK: Okay, so we have an additional item to the consent and we have a postponement.

Okay, alright the first item on the consent agenda is BOFA 9900001, Stanley Benedetto and Judy Benedetto to allow an existing room addition on the rear of the single family development to encroach in to the rear setback. Is the applicant present?

MR. RUBIN: Madam Chair, before you begin with this particular petition I must announce I have to recuse myself I represent Mr. and Mrs. Benedetto, they are present clients and it would therefore be inappropriate for me to hear this motion.

CHAIRMAN KONYK: Let the record reflect that Mr. Rubin has recused himself from this matter.

MR. BENEDETTO: Stanley Benedetto, 5576 American Circle Delray Beach, Florida.

CHAIRMAN KONYK: Mr. Benedetto, the staff has recommended two conditions do you understand and agree with those conditions?

MR. BENEDETTO: Yes I do.

CHAIRMAN KONYK: Okay, is there any member of the public to speak on this item? Could you step forward and give us your name for the record?

MR. FLINT: My name is Howard Flint.

CHAIRMAN KONYK: Mr. Benedetto, could you let him step up to the podium, thank you.

MR. FLINT: My name is Howard Flint I live in Heritage Park Development, the same development that Mr. Benedetto lives in. I live on lot 16 which is just a few homes from where he is and I think it may be marked on the map. I would like to note that I think Mr. Rubin's recusal is certainly in order and I appreciate his doing that because I know that he represents Mr. Benedetto.

I note that from some papers that I just received just a few minutes ago that Mr. Benedetto has previously violated the rules when he closed in his porch. He was cited for that and that's of record.

CHAIRMAN KONYK: This isn't going to be a full hearing right now. Just make a brief statement on whether or not you object to this variance and --

MR. FLINT: I'm not sure of the procedure but I do object and I sent a letter in and I wish to speak further to it when it's appropriate.

CHAIRMAN KONYK: Okay, then we will have to pull this item from the consent agenda and it will be reordered to the regular agenda. It will become the first item on the regular agenda.

MR. FLINT: Thank you.

CHAIRMAN KONYK: So BOFA 9900001, is being moved to the regular agenda.

CHAIRMAN KONYK: The next item on the consent agenda is Board of Adjustment Time Extension 9900006, the applicant is requesting a time extension to BA98-7 conditions two and four. Condition two required the applicant to obtain a building permit by January 17, 1999, and condition number four required the applicant to obtain a special permit for the accessory apartment by December 17, 1998. Is the applicant present?

MS. RAWN: Yes.

CHAIRMAN KONYK: Would you state your name for the record and come up to the podium, please?

MS. RAWN: Kim Rawn.

CHAIRMAN KONYK: Can you spell your last name?

MS. RAWN: R-A-W-N.

CHAIRMAN KONYK: The staff has recommended five conditions do you understand and agree with those conditions?

MS. RAWN: Yeah, I got six.

CHAIRMAN KONYK: Jon?

MR. MACGILLIS: Maybe one is the engineering condition -- oh she's referring to her special permit that she's got.

MS. RAWN: Okay.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: So it's the original conditions that we had we just changed the two dates that were all ready expired.

MS. RAWN: Okay.

CHAIRMAN KONYK: Is there anybody from the public to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Any letters, Jon?

MR. MACGILLIS: We don't send out letters.

CHAIRMAN KONYK: Any member of the Board feel that this item should not remain on the consent?
(NO RESPONSE)

CHAIRMAN KONYK: Seeing none Board of Adjustment Time Extension 9900006 will remain on the consent.

MS. RAWN: Can I leave?

CHAIRMAN KONYK: Well you have to wait until we vote on it and then you can leave.

STAFF RECOMMENDATION:

Staff recommends a maximum 6 month time extension for BA98-70, Condition #2, #3 and #4. Condition #2 from January 17, 1999 to July 17, 1999; Condition #3, from April 17, 1999 to October 17, 1999; and Condition #4 from December 17, 1998 to June 17, 1999, consistent with Section 5.7.H.2 of the ULDC, to provide additional time for the petitioner to commence development and implement the approved variances.

The property owner shall comply with all conditions of approval of BA98-70, unless modified herein:

ZONING CONDITIONS

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)

2. By January 17, 1999, the applicant shall apply to the Building Division for a permit for the 700 square foot accessory apartment. (DATE: MONITORING -Bldg)

IS hereby amended to read:

By July 17, 1999, the applicant shall apply to the Building Division for a permit for the 700 square foot accessory apartment. (DATE: MONITORING -Bldg)

3. By April 17, 1999, the applicant shall obtain a building permit for the 700 square foot accessory apartment. (DATE: MONITORING -Bldg)

Is hereby amended to read:

By October 17,1999, the applicant shall obtain a building permit for the 700 square foot accessory apartment. (DATE: MONITORING -Bldg)

4. By December 17, 1998, the applicant shall obtain a Special Permit from the Zoning Division for the accessory apartment. (DATE: MONITORING-Zoning-BA)

Is hereby amended to read:

By June 17,1999, the applicant shall obtain a Special Permit from the Zoning Division for the accessory apartment. (DATE: MONITORING-Zoning-BA)

5. Prior to the issuance of the Certificate of Occupancy for the accessory apartment, the applicant shall install a 36" native hedge along the east and north portion of the accessory structure to mitigate the setback encroachment. (CO/Bldg/Inspection)

ENGINEERING COMMENTS

No comments on original BA98-70 variance.

CHAIRMAN KONYK: The next item on the consent is SD-92, is the applicant present?

MS. LOCKHART: Yes, Sarah Lockhart with Gee and Jenson.

CHAIRMAN KONYK: Are there any conditions on this?

MR. MACGILLIS: There's four conditions.

CHAIRMAN KONYK: There's four conditions do you agree and understand those conditions?

MS. LOCKHART: Yes.

CHAIRMAN KONYK: Any member of the public to

Speak on this item?
(NO RESPONSE)

CHAIRMAN KONYK: Any letters?

MR. CUFFE: No letters there were three telephone inquiries. No objections they were inquiries for information.

CHAIRMAN KONYK: Any Board member feel that this item warrants a full hearing?
(NO RESPONSE)

CHAIRMAN KONYK: Seeing none this item will remain on the consent.

CHAIRMAN KONYK: So BOFA 9900001, has been removed and placed on the regular agenda and the other two items will remain on the consent. Does someone want to make a motion?

MR. BASEHART: Madam Chair, I'll make a motion that we approve Board of Adjustment Time Extension 9900006 and SD-92 based on the staff report recommendation.

CHAIRMAN KONYK: Okay, do we have a second?

MR. MISROCH: Second.

CHAIRMAN KONYK: Okay, we have a motion by Mr. Basehart and a second by Mr. Misroch any discussion?

(NO RESPONSE)

CHAIRMAN KONYK: All those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously. If your items on the consent you are free to leave.

CHAIRMAN KONYK: The first item on the regular agenda is BOFA 9900001, and that's Stanley Benedetto and Judy Benedetto. The applicant can come forward. Now we are going to proceed with a full hearing on your item are you prepared to do

that?

MR. BENEDETTO: I guess.

MR. MACGILLIS: Do you just want us to read into the record the legal's.

CHAIRMAN KONYK: Hm-hmm.

MR. MACGILLIS: This is item number one on the agenda BOFA 99-01, Stanley and Judy Benedetto to allow an existing room addition on the rear of a single family dwelling to encroach into the rear setback. The location is 5576 American Circle lot 30, located on the west side of Sims Road, 400 feet north of Atlantic Avenue and .5 miles west of Military Trail in the RM zoning district, within the Homes of Heritage PUD, petition number 88-51. Found on pages one through fourteen in your backup material.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: Just for the Board's information staff is recommending approval on this variance with two conditions. We did receive a letter from the gentleman who's in opposition of the variance. He's located at 5601 American Circle, I'll just circulate this map around so you can get an idea. The yellow lot indicates where he lives in proximity to this lot.

I could go through the letter but I'll wait until he presents his comments on it. I've gone through it and I can respond to his comments once he presents them. I don't know if staff -- if you want us to go through the staff recommendation or if you just --

CHAIRMAN KONYK: I'm sorry, Jon, I didn't hear you.

MR. MACGILLIS: Would you like staff to do a presentation now or --

CHAIRMAN KONYK: Yeah, sure why doesn't staff do their presentation.

MR. MACGILLIS: When the original house was constructed it was constructed with a screened enclosure on the back of the house. It existed in that fashion for several years. The applicant has indicated that the developer indicated to him that the screen enclosure could be at a future date converted into a solid roof and walls. Based on that assumption the property owner went ahead and enclosed the walls and put a solid roof on that.

That changed the structure then from a screen enclosure which has less setbacks than a room addition. The room addition has to meet the same

setbacks as the house. He was cited by code enforcement, code enforcement has him in violation now. He applied for a building permit which is on hold downstairs until he gets the variance because it's encroaching into a rear setback.

He's in the process, he has provided us with documentation that he is proceeding with an abandonment procedure because there is a 12 foot drainage easement that is running under this structure. He is going to abandon a portion of that, that portion underneath the structure. The staff is recommending approval. In similar cases in the past where it's effecting a rear setback and you have an open space in the rear and staff's been out on the site and taking pictures found in your backup material on page four and page five that show the actual structure. It's not detracting from the actual community because of the tree's and stuff that are located around it. It doesn't -- it just appears to be an extension on the main house.

We feel that the open space to the rear and the 20 foot lake maintenance easement which he is not encroaching that's outside of his lot, mitigates the same setback that you'd have if he was meeting the code. And with the two conditions staff feels that the granting of this variance would meet the general intent of the rear setbacks.

CHAIRMAN KONYK: Okay, do you have anything to add to that?

MR. BENEDETTO: No.

CHAIRMAN KONYK: If you would come forward and present your objections. Is there anyone else that's going to speak on this item?

(NO RESPONSE)

CHAIRMAN KONYK: Then if the court reporter -- are you going to speak on this item as well?

AUDIENCE MEMBER: Yes, please.

CHAIRMAN KONYK: Okay, can you both come forward and -- or you don't need to come forward yet. Just raise your hand and be sworn in.

(WHEREUPON THE SPEAKERS WERE SWORN IN)

CHAIRMAN KONYK: Your name for the record?

MR. FLINT: My name for the record is initial J. Howard Flint, F-L-I-N-T, Jr.

CHAIRMAN KONYK: Okay, thank you.

MR. FLINT: I'm a little bit aghast here this morning because Mr. Benedetto has been a contractor for many years and he still does contracting work here around in Florida since he

moved here. Does he have a license I don't know but I note that he closed in the back of his house without obtaining a permit and much to my surprise here as I just came back from out of state a few days ago that he has proceeded to enclose the whole big area behind his house which this Board knows about. The pictures show that.

It's my understanding that he did not obtain a permit prior to beginning on that and as a contractor he well knows that he is suppose to have a permit. People that don't do contracting work pretty much know they're suppose to have a permit. So this is two instances of where he has not gotten a permit.

And what I'm disturbed about is that this thing is pretty much done and now after the fact where apparently he was reported and had to obtain a permit this situation is before this Board and after the fact I'm not just sure why this should be done. Mr. Benedetto also to my knowledge has violated some state codes relative to the home owners association so he has a history of not doing what is right.

CHAIRMAN KONYK: Just speak to the variance, please.

MR. FLINT: Pardon?

CHAIRMAN KONYK: Just speak to the variance.

MR. FLINT: Well, I'm speaking to his history.

CHAIRMAN KONYK: We don't have anything to do with it.

MR. FLINT: I understand what you're saying and I will do that. I just wanted to give a background.

CHAIRMAN KONYK: Just give us your objection to the variance.

MR. FLINT: Alright, now this room exists there and what should be done about it, it is proper I think if this Board so chooses to make it be torn down again and make it be put back to where it was. As far as my objections you have received my letter and I would like to say that -- I would like to correct one thing in my letter. I mentioned that there was a ten foot setback at the rear I'm not sure just if it's fifteen feet, I'm not just sure whether he's gone ten feet or some fraction of that. Apparently, it's a little bit less so to that extent I would like to make that correction.

The reason that I give for not approving

this variance is that it disturbs the view from the lake and from all of those who face on the lake and all of the rest of us in that development. When we come into that development, approach -- there's a circle there so you can go either way and you have a view of Mr. Benedetto's house on the other side of that lake. And there's a clubhouse there for everybody to enjoy and there's a common area all around that lake, as there is in other parts of that development.

And I personally think this is a negative distraction to the pleasantry of that view to have his house extended back from beyond where it's suppose to be when it was all planned and platted out previously. And he seems to ignore the consideration for other people who may want to be walking around on the common area who have to view that when they come in. By leaving only that small distance if I choose to walk around that common area I feel that I can't come that close to the house because I would be intruding.

CHAIRMAN KONYK: Where's the common area?

MR. FLINT: Pardon?

CHAIRMAN KONYK: What common area are you speaking of.

MR. FLINT: Beyond his setback his lot line between there and the lake that's all a common area.

CHAIRMAN KONYK: That's a lake maintenance easement. That's there for the maintenance of the lake, that's not a common area.

MR. FLINT: It's an area that as an owner I have privilege to walk around on.

CHAIRMAN KONYK: Not really, no you don't. Your interpretation is incorrect. That's not common area. That's a drainage maintenance easement. Do you own to the lake or do you just own to the easement?

MR. FLINT: It's part of that development and we pay for the maintenance on that.

CHAIRMAN KONYK: Does he own to the lake or the easement?

MR. FLINT: Am I precluded from walking around of that lake?

CHAIRMAN KONYK: Whatever, it's a drainage maintenance easement, am I correct?

MR. FLINT: That's true.

CHAIRMAN KONYK: Okay, so the drainage maintenance easement is there for the maintenance of the lake. The person that is maintaining --

MR. FLINT: I am an owner there I should have the privilege to walk around it.

CHAIRMAN KONYK: That would be defined in your documents. I know that in my community you wouldn't have the privilege of walking around the drainage maintenance easement. The easement is there for the purpose of maintaining the lake not for common area to be used by all homeowners. So I don't know what your documents say.

MR. FLINT: I'm not sure either but I know that I pay monthly assessments to the association for the maintenance of that --

CHAIRMAN KONYK: Of the lake.

MR. FLINT: Pardon?

CHAIRMAN KONYK: Okay, whatever.

MR. FLINT: Yeah, whatever but I pay to keep it up and it's a distraction to me but the big thing that I object to is the spoiling of the view when I come into the place and that sort of thing.

Now there is another problem. If this is granted to him this is going to set a precedent where everybody else in there, in that development can get a variance or at least ask for one. And then we are going to have all kinds of extensions back on that lake or behind anybody else's house anytime and all they are going to do is say Mr. Benedetto got one why can't I.

CHAIRMAN KONYK: Well, if you look at the criteria it specifically states that just because someone else got the variance doesn't automatically allow you a variance for that same issue. Every item is heard on it's own.

MR. FLINT: It will set a precedent and when the next guy comes in here he's going to argue one got it before.

CHAIRMAN KONYK: Okay.

MR. FLINT: Now Mr. Benedetto seems to have one set of the rules --

MR. WICHINSKY: That's not true, that's incorrect. This Board does not operate in that manner. Each and every item is individual and there really is no legal precedence from one item to the another.

MR. FLINT: Sir, I agree with you on that but if I want to build an extension on the back of my house the first thing when I come before this Board I'm going to say Mr. Benedetto did it -- Benedetto did it so why can't I --

CHAIRMAN KONYK: And I say it doesn't

matter.

MR. WICHINSKY: We would say that's irrelevant.

MR. FLINT: It may not be relevant but I have to say it.

CHAIRMAN KONYK: Do you have anything else to add?

MR. FLINT: Well, I think that in doing this we have rules that the zoning and platting and the builders do when they go in there and if we keep on making exceptions all the time than what are the rules for to begin with and it just seems to me that everybody -- you plan a place to look beautiful and then somebody comes along and wants to make exceptions. Now, Mr. Benedetto seems to have one set of rules for himself and another set of rules for everybody else in there.

And I might say this I personally know of other people who would have appeared here not withstanding the gentleman here but they're reluctant to come here. Some work, some have to take time off, some are too old, and so forth. But I know personally they object to this sort of thing. And they would feel intimidated later if they came and talked to this body -- excuse me I'm a little bit not use to this sort of thing.

I guess I could -- I think I can just sum it up this way that his total and deliberate disregard for the ordinances this time and previously and obtaining this permit only when he was found out and had to do it. Did not follow proper procedures when he knows better as a contractor should be very heavily weighted by this Board in considering whether or not to give him a variance. I think because he has violated these rules I think that it ought to be considered that he not be granted that. I request and ask this Board not to grant that variance on that reason along with the aesthetic distraction that it may present. And that he be denied that application and that he be required to dismantle that structure that he has added on there before he got the permit. Thank you.

CHAIRMAN KONYK: Okay, thank you.

MR. COHEN: There's another gentleman.

CHAIRMAN KONYK: Yeah, we have someone else that wanted to speak.

MR. ARENA: Yes.

CHAIRMAN KONYK: And your name for the record?

MR. ARENA: My name is David Arena.

CHAIRMAN KONYK: Can you spell your last name?

MR. ARENA: A-R-E-N-A. I live in lot 20 of the development we are talking about. As a resident I drive around the circle every single day, many times a day and to see Mr. Benedetto's structure you really have to look intentionally to it you have to really try to find it. Just driving or walking around there you don't see it, it's hard to see. You have to be really intent on doing -- on looking at it and maybe that's what Mr. Flint's been doing looking intentionally at that particular spot so he can object to it. When --

CHAIRMAN KONYK: So you're not objecting to this?

MR. ARENA: Not at all.

CHAIRMAN KONYK: Okay, thank you.

MR. ARENA: When we all owners bought the place we were misled by the builder. All the properties have a fence about ten feet deep and we were told by the builder that we can all be within that fence. We could put porches or build patio's or do anything. That was understood that was our decision to do or not to do anything to that area. And it was the fences are all about ten or twelve feet and as I said the builder told us and the seller told us we can build anything in there that it is legal. The fact that Mr. Flint says that it might make a precedent I do hope he makes a precedent because many of us would enjoy our property much much more if we were allowed to do what Mr. Benedetto has done. I can't see that Mr. Benedetto's place has disturbed the aesthetics of the place or in any other way.

In particular with Mr. Flint, he is here a few months out of the year so I don't see how that structure can effect him at all.

CHAIRMAN KONYK: Okay, do you have anything else to add?

MR. ARENA: No, that's it thank you for listening.

MR. BASEHART: Madam Chair, can we ask the applicant a couple of questions?

CHAIRMAN KONYK: Sure, Mr. Benedetto, I apologize we didn't have you sworn in at the beginning of the hearing so I would like to have you sworn in now.

(WHEREUPON MR. BENEDETTO WAS SWORN IN)

MR. BENEDETTO: I do.

MR. BASEHART: Mr. Benedetto, is it true that you're a contractor?

MR. BENEDETTO: Yes, I was a contractor all my life.

MR. BASEHART: How is it that this addition came to be.

MR. BENEDETTO: Well, I went to get the permit. I had a screen enclosure, I took it down and made it a closed in screen enclosure. I was told I had to get a permit. I went down --

CHAIRMAN KONYK: After you did it. You didn't know before that that you needed a permit?

MR. BENEDETTO: No, it existed. Something that exists and you're not changing the look of it you're just making it a closed in room. I went to get the permit after I did it and they said I can't get a permit. And then I had to go for a variance. And I went through all the steps I got all of the utility companies to sign off because none of the utilities are underneath my room or nothing. Actually every house there is 55 feet long, mine is 50. I'm entitled to a 55 foot house they said I need a five foot variance and this is what I'm standing here for.

But Mr. Flint says it obstructs the view. Nobody can see my addition unless they go in back of my house and look for it. Because if you go on the other side of the lake and there's 42 people there and nobody is here to say that my addition is ugly. And you've got the pictures there to prove it. I mean they took the pictures of it and my addition is just a closed in family room addition, all metal.

CHAIRMAN KONYK: Okay.

MR. BENEDETTO: Okay.

MR. MOORE: May I have a word?

CHAIRMAN KONYK: Mr. Benedetto, Mr. Moore would like to ask you a question.

MR. MOORE: I really have two questions one for you and maybe one for Jon. My first question there is a home owners association?

MR. BENEDETTO: Yes.

MR. MOORE: I assume you must have something like an architectural review committee?

MR. BENEDETTO: Yes, we got -- it was approved.

MR. MOORE: Is that approved by your association?

MR. BENEDETTO: Yes.

MR. MOORE: Was it approved before you built it?

MR. BENEDETTO: Yes.

MR. MOORE: So the association agreed to allowing you to put the walls up and you went ahead?

MR. BENEDETTO: Yes, yes. We didn't know we needed approval at that time. I would have found out I had a utility easement. We were told -- we have 15 feet of fence behind our house. We were told by the builder when my house was built that we can go up to the end of our fence. Not knowing ten feet of it was utility easement. Until I started all of this then I found everything out after that. That we have a utility easement underneath at the back of our yard and you can't go to the fence because I would say ten or fifteen people --

CHAIRMAN KONYK: Mr. Benedetto, the roof was already there right?

MR. BENEDETTO: Yes.

CHAIRMAN KONYK: So the roof was already there, Gil. He just took the screens out and put a wall.

MR. BENEDETTO: Not the solid roof the screen roof was there.

CHAIRMAN KONYK: Oh okay.

MR. MOORE: Did you say you are a contractor for the county?

MR. BENEDETTO: Pardon me?

MR. MOORE: You are a contractor for the county?

MR. BENEDETTO: Yes, not in general.

MR. MOORE: What kind of contractor are you?

MR. BENEDETTO: Small contractor in Florida.

MR. MOORE: House additions?

MR. BENEDETTO: No, just interior. Small contractor.

MR. MOORE: Only interior?

MR. BENEDETTO: Yeah.

MR. MOORE: Jon, the only other question I ask is if this petition came before you with the structure not being built in it's existing state I assume that are you know stating for the record if the home owners association was in agreement that they would approve him would you recommend approval.

MR. MACGILLIS: Yeah, because of the open space to the rear. The intent of the rear setback is you don't have -- you maintain a limited separation between it and the lot behind and in this case you've got a lake or a retention area with

water in it that's 75 to 100 feet wide. Staff did go out and take pictures as you can see in the report even if you stand on the other side and look back it was very well constructed. It just looks like the house it's not like it's a large screen enclosure out of character with the existing architecture of the house. It blends in and the tree buffers it so it looks like a natural part of the original house.

CHAIRMAN KONYK: Okay, anything else?

MR. WICHINSKY: Madam Chair, I'd like to make a motion if I may?

CHAIRMAN KONYK: Sure.

MR. WICHINSKY: I'd like to move for approval of BOFA 98000 --

MR. FLINT: May I rebut that please. May I have a word for that?

MS. BEEBE: I think we've already closed comments.

CHAIRMAN KONYK: We really did close comments. If it's a brief comment though I'll let you go ahead.

MR. FLINT: Are you saying yes?

CHAIRMAN KONYK: If you make it brief.

MR. FLINT: I will make it brief.

CHAIRMAN KONYK: Okay.

MR. FLINT: I note that Mr. Benedetto says that the previous contractor or owner rather that was in there told him allegedly so. As a contractor himself he has to know that even if he's told that he can do something or may do something does not detract from the fact that his knowledge from all of his contract work over the years both in the state where he lived before and in Florida -- everybody knows you have to have a permit. So if he had -- if he said you can do this that may mean it's possible to do it but that doesn't mean that he's excused from seeking a permit. And the fact that I may be here only a certain part of the year does not detract from this whole thing. And Mr. Benedetto's history of ignoring the laws and there ordinances I think should be weighed very heavily again.

MR. BASEHART: Let me respond to that. Whether somebody did and improvement like that without a permit when a permit was required is not in my opinion a legitimate reason to approve or deny the variance. There are penalties for that. If he is a licensed contractor and he did construction without a permit he can have action against his

license. If he doesn't have a license there can be action against him for contracting without a license. Although it's his own home he would be entitled to an owner builder permit. There are also penalties in the building code for constructing without a permit, tripling quadruple fee's things of that nature.

The appropriate issues here is whether or not the granting of the variance would have an adverse impact on the surrounding properties. Whether or not the granting of the variance would violate the spirit and the intent of the code and other criteria. There are seven criteria. The staff has done an analysis of each and every one of those criteria and the staff has concluded that the criteria has been met.

It's up to this Board after hearing testimony and reading the staff report to determine whether or not we agree on an individual basis with the staff's evaluation and if we do than the granting of the variance is warranted but to use the denial of a variance, the basis for the denial of the variance as a penalty for not getting a permit when you should of had one is totally inappropriate.

MR. FLINT: Well from my point of view the view is distracted and destroyed when you come into the lake and I -- what I'm really concerned about is that we're meeting here -- this Board is meeting to consider a situation after the fact. I viewed that thing this morning when I left. The whole structure is completely closed in and I don't know what's inside and you're almost forced to approve it because it's already done.

CHAIRMAN KONYK: No, we've denied things in the past.

MR. FLINT: Well that's sort of a rhetorical question, you know, but I'm saying it would be a whole different story if he was here asking for it before.

CHAIRMAN KONYK: We asked Jon and he said he would of recommended it for approval. But let me just state right now that the public portion of the hearing is now closed. We have a motion from Mr. Wichinsky for approval.

MR. WICHINSKY: Actually I didn't get to finish the motion so let me repeat it.

CHAIRMAN KONYK: Okay.

MR. WICHINSKY: My motion is for approval of BOFA 9900001, as recommended by staff with the two

conditions as stated on page 6 of the agenda.

MR. COHEN: Second the motion.

CHAIRMAN KONYK: Okay, we have a motion by Mr. Wichinsky and a second by Mr. Cohen. Any discussion?

MR. BASEHART: Madam Chair, I just want to state that I'm going to support the motion because after having looked at the pictures, heard the testimony and looked at the criteria for the variance. I find that the addition is not obtrusive and it does comply with the spirit of the code and it creates no adverse impact on any of the surrounding properties.

And also I think it's important to note that the gentleman Mr. Flint that spoke before objects on the basis of interruption of views and aesthetics, but he has a street and three houses in between his property and the applicants and the improvement is on the other side of the applicants house. All of the people that surround the lake that -- or the pond or whatever it is that look directly at the applicants property have not objected.

CHAIRMAN KONYK: Okay, thank you. Anything else?

(NO RESPONSE)

CHAIRMAN KONYK: We have a motion and a second. All those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Opposed?

(NO RESPONSE)

CHAIRMAN KONYK: Motion carries unanimously.

MR. BENEDETTO: Can I leave now?

CHAIRMAN KONYK: Why don't you wait a minute.

MR. BENEDETTO: Okay.

STAFF RECOMMENDATIONS

Approval, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. The lot is typical in size and layout to other lots within this residential development. The lot also supports a typical size dwelling and solid roof room addition. However, the lot abuts onto an open space to the rear. The ULDC has different setbacks for screen enclosures with or without solid roofs. When the screen enclosure was originally constructed by the developer, it had a screen roof and met the required setbacks. However, the applicant modified the roof and converted it to a solid pan roof. In doing so the required setbacks changed. Since no permit was obtained the structure has remained in the setbacks, until recently cited by Code Enforcement. The open space to the rear is not typical to all lots within this 41 unit subdivision. The retention area, which is approximately 130 feet in width will mitigate the minor 6.25 foot rear setback encroachment. There is also a native tree that buffers a large portion of the structure from visibility to adjacent lots.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The applicant states the original developer informed him the screen enclosure could support a solid roof and walls. Assuming this information was correct the applicant proceeded to convert the screen roof to a solid one. The applicant was later cited by Code Enforcement for the modifications to the structure without the required permits. When the applicant applied for a building permit to legalize the new roof and solid walls, he was informed that the classification of the structure changed because it now has solid walls and roof. The modified screen enclosure would have to meet the same setback as the main structure. The applicant is in the process of abandoning 5 feet of the 10 foot utility easement that runs under the structure. For the remaining 5 foot of the easement the applicant has obtained all the necessary utility releases to allow for the screen enclosure to encroach the easement.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE

COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT: NO. The ULDC requires separate setbacks for screen enclosures for a zero lot home with or without a solid roof. The setback for screen enclosures without a solid roof the setback is 2 feet, while for a solid roof it is 15 feet. The greater setback for solid roof enclosure is to compensate for change in character to the living space from a semi to permanent to habitable living area. However, in this particular situation there is a retention area to the rear of the lot that will adequately mitigate any negative impacts associated with this 6.25 foot rear setback. Variances have been previously granted to property owners in a similar situation when the lot is located on open space (lake golf course, preserve, etc.) to the rear.

If the variance is granted, the property owner can be issued a building permit and have the existing structure inspected for compliance with the County building codes.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The structure is existing with the solid walls and roof which was installed by the applicant. To remove the walls, windows and roof could possibly effect the overall integrity of the structure. The applicant is requesting a 6.25 foot variance and with the retention area to the rear this encroachment will be mitigated.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The 6.25 foot variance is the minimum variance that will allow the structure to remain without costly modifications to the structure. The applicant did not add any floor area to the original structure but simply modified the walls and roof. Therefore, there was no changes to the footprint of the structure that would be noticeable to surrounding neighbors. The mature tree in the rear of the lot buffers a large portion of the enclosure from adjacent residents.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. The intent of the ULDC rear setback provision is to ensure minimum separation between property lines and structures. Since the rear of this property abuts a retention area no property or structures will be encroached upon, if this variance is granted. The retention area and mature tree to the rear of the enclosure will provided adequate mitigation for this minor 6.25 foot setback encroachment.

7. THE GRANT OF THE VARIANCE WILL BE ACROSS THE RETENTION AREA - SHOWS THE INJURIOUS TO THE AREA INVOLVED OR ROOM ADDITION AND MATURE TREE OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. This screen enclosure is located in the rear of the lot which is currently existing. The retention area to the rear of the lot will mitigate the minor 6.25 foot setback. Other property owners have been granted similar variance requests when the structure abuts an opens space to the rear.

ENGINEERING COMMENT

No Comments

ZONING CONDITIONS

1. By February 21, 1999, the applicant shall provide the Building Division with a copy of the Board of Adjustment Result Letter in order for the building permit, PR9812390, for the solid roof screen enclosure can be issued. (DATE-MONITORING-Bldg Permit)

2. By April 21,1999, the applicant shall obtain a permit for the solid roof screen enclosure. (DATE: MONITORING-BLDG PERMIT)

CHAIRMAN KONYK: The next item on the agenda is BOFA 9800093, Leonard and Ruth Litwin to allow for the following variances, I'm not going to read them is the applicant present?

MS. GRIFFIN: Yes. Good morning my name is Janice Griffin I represent Mr. and Mrs. Litwin and Mr. Litwin is also present today.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: This would be an item that was continued from the December hearing.

CHAIRMAN KONYK: Correct.

MR. MACGILLIS: So with the minutes if you need to refer to them this would be one.

CHAIRMAN KONYK: Okay, do you want to introduce the item?

MR. GOUSIS: BOFA 98-93 Leonard and Ruth Litwin to allow for the following variances. One an existing garage to encroach into the required side interior, two an existing addition to a single family dwelling to encroach into the required side interior setback, and three a proposed addition to the single family dwelling and garage to encroach into the required side interior setback. Location 20482 Linksvew Drive approximately .25 miles north of Glades and approximately .9 miles west of Jog Road within the Cypress Point Villas of Boca West, in the AR Zoning District petition 85-007.

CHAIRMAN KONYK: Is there anybody from the public to speak on this item?

(WHEREUPON SEVERAL AUDIENCE MEMBERS RAISED THEIR HANDS)

CHAIRMAN KONYK: If everybody that's going to speak would raise your hand and get sworn in at the same time that would be helpful.

(WHEREUPON THE INTENDED SPEAKERS WERE SWORN IN)

CHAIRMAN KONYK: We usually have the applicant and then the staff report --

AUDIENCE MEMBER: We can't hear anything.

CHAIRMAN KONYK: Well, if you'll be quite maybe you'll hear. The staff will give their presentation after yours.

MS. GRIFFIN: Good morning, my name is Janice Griffin and we're here again on the matter of Mr. Litwin --

CHAIRMAN KONYK: Can you bring the microphone closer so they can here?

MS. GRIFFIN: You may remember some of the circumstances from the last meeting. However, I want to review just a bit of the history of the residence as it is important to understand the context of our request. How we got to this point and why we are here today. This is a chronology of events -- construction events if you will with respect to this residence. Is everyone able to pretty much see that? And basically what it does is it starts out with your site plan here in June of '81, goes through the idea that --

MR. COHEN: We can't here you.

CHAIRMAN KONYK: Do we have a mic she can hold?

MS. GRIFFIN: That's alright I'll just go ahead with this. I'm familiar with it enough I'll follow it along.

CHAIRMAN KONYK: Okay.

MS. GRIFFIN: There were permits that were issued, zoning approval permits that were issued in 1981 for the construction of the house and the garage. If you recall the garage is a separate piece of construction part from the house and it sits 2.8 feet off of the property line that is in question today. There was a certificate of occupancy that was issued for both the certificate of completion for the garage and a certificate of occupancy for the residence. Then in 1990 there was another round of approvals and permits and applications.

At one point there was a variance that had been requested by Mr. Litwin for the garage that exist on the property or 2.8 feet off of the property line. At the time that that variance request was made the county came back and indicated that the variance was not necessary because the application of the standard to that particular piece of property was a separation standard and that the garage had been constructed within the separation standard and it wasn't necessary.

At that point -- that had been in connection with the residence addition that was being done in 1991. And again the building permit and the site addition for the site addition and the review indicated that it was a separation standard -- five foot separation standard. A building permit was issued, certificate of occupancy was issued and advising that it complied with all of the code requirements.

Then in 1998, I think it was May of 1998 at the request of one of the neighboring property owners Mr. Asher, the zoning director issued the letter that says, the former zoning director, that's said that there was a seven and a half foot setback that applied to this property lines. That was the first and only time that there has been an indication that that was the setback.

Now after hearing -- after the hearing that we had on the administrative appeal one of the items that they basically forgot was the idea that there was a very narrow question that was presented to this board. And that was whether or not the former zoning director had provided you with sufficient information to support his decision -- his interpretation. But if you recall his interpretation was only supported by two basis. There was the site plan which allegedly showed that this was a single family detached separate. And it's important that we look at the idea that this was a single family detached separate which he keeps insisting upon. The actual designation that was indicated is a single family detached nothing more. Single family detached.

These properties were originally designated by the developer on the site plan as a patio home. And in 1981 there was a separate designation under the site plan or the zoning code that indicated that it was -- there was a separate designation for patio homes under the 1981 code and that designation provided for separation standards. The only designation that's on the site plan as we pointed out many times is single family detached. There is no separate designation as a separate.

Again under the '81 code for a patio home the separation standards apply. Now the staff also points out and the zoning director pointed out these little "Z" marks across the property lines and they decided that those indicate that that's a setback standard. However, what it's showing on the site plan is those are the locations of the townhomes which have common property lines and the only reason it doesn't show on this here is because there is no common property line on our -- the separation of our lot from the northern lot. It indicates nothing more than there is no common property wall. It doesn't indicate that there's suppose to be a setback it doesn't establish the setbacks.

So I think based upon the evidence that has

been presented if the question had been is there sufficient evidence to support the continuation of the application of the setback standard to the property I think the answer probably would have been yes. It seems more likely that all of these decisions were correct and the erroneous interpretation was one of the former zoning director. But we're stuck with that interpretation whether it's flawed or not. So we've come to you based upon the relief channels that have been established by the county.

As a result of the interpretation of Mr. Hodgkin's the properly permitted structures that are existing on the property have become non-conforming requiring the variance. And the construction of the addition that he had originated when he first started the addition in 1991 requires a variance before he can construct it. Now, staff of course has recommended approval of the existing improvements. Despite the fact that each of their arguments in favor of granting the variance as to the existing improvements are exactly the same as they are to the proposed addition. They are still for technical reasons recommending denial.

Now there's a couple of reasons for that.

The first one seems to be that the argument that the house is big enough already and six of the seven standards staff points to the '91 addition saying he's got enough and any future additions would be over utilization and that he already has enough living area for his family. Now there's a couple of things wrong with this justification. First, we have confirmed with staff that the proposed addition does not exceed the coverage ratio's required under the code. So it isn't relevant to the determination of whether or not the variance should be granted.

And second, it seems a little strange that the county would get to decide how much living area is enough. If the property owner decides to over improve his property it shouldn't be a factor in the variance process as long as it doesn't violate the coverage ratio's. Now, I can understand that this argument might come from the neighboring homeowners for whatever reason. Whether they are envious of a larger house or just for whatever reason feel it's going to be a problem. But it's not about argument for staff's position in the variance.

Now, the second reason for their recommending denial is that there is an alternative design available for the addition. They originally offered two spots, one was in the front of the house and one in the back and this is a site plan of the Litwin residence here and this is the adjoining residence, Mr. Asher's residence. The staff had originally indicated that supposedly there would be room here in the front to build or here in the back. That wouldn't require a variance and because of those two alternatives they could not recommend a variance on this one.

Now, the problem with the one in the front is because of the parking requirements there is no on-street parking that's my understanding from the designation of the site plan, that there was a requirement that there be additional parking here. There is not room here given the setbacks for there to be any size addition that would accommodate what we need. The problem in the back is two fold.

First of all, if you build here in the back you will -- this is a lake area back here and there is a very open feeling to the properties back in this area. The landscaping runs to about here and the wood fence runs to about there. From about here on it's an open railing fence and the landscaping has been kept to a minimum. Low hedges or occasional palm tree's around the pool and patio area. The reason for that is because this open area back here lends a view of the lake area. So that was -- that would be the first problem is that if you put it back here it's going to interfere with the view.

The second problem is that this area right here is the 1991 addition. When it was designed it was designed to accommodate a future addition for the growing family and it was designed with the addition being here and that was how the traffic flow and the interior of the house was designed. Because they had been told that there was a setback standard which would allow an addition in this area. If they had been told that there was a seven and a half foot setback that was going to be applied this addition would of had to been reconfigured because as it stands now the way it is set this is the master bedroom and the architect is here and he can speak a little bit better.

There was also a letter that was provided to the zoning department that outlines the idea that to reconfigure the interior of the house would be very

difficult. As it stands now you would have to go through the bedroom in order to get the additional two bedrooms that they would be looking to do. So the alternative designs are really not viable alternative designs and so they would not be available for this and should not be a factor in the petition process.

Now, in light of the opposition that was raised against this addition I think it's important to note as staff has pointed out several times in their report that the existing garage and this addition have been there since 1981 and 1991 respectively without any complaints from the neighbors. Mr. Asher has made claims that he has relied on the existence of a seven and a half foot setback when he bought his house. But the problem is the physical evidence contradicts that reasonable alliance.

The garage was there, the addition was there and they are both obviously not seven and a half feet back from the property line. So either he didn't see the garage and addition when he bought his house which would of course support our contention that he's not going to see the addition. Or he bought the house knowing it was there without regard to it and he's now raising that as a reason for his opposition.

The truth is, is that the addition is not going to have any impact on the neighbor's. There's extensive landscaping as I said along this area of this and this is consistent throughout the neighborhood. The front of the houses have lots of landscaping it's a very lush look. You also cannot see the addition as you are driving along the street. When you look at the house all you see is the garage. This part here is going to be practically invisible. Again unless you are specifically looking for it.

Again staff has indicated that they feel there is an alternative option available. So technically the variance doesn't meet the literal intention of the criteria. But what they've done is they've taken the sometimes imperfect words of the code and they used it to frustrate the intent of the code. If you look at the discussion under their findings of fact item 3 and their analysis presented as to item 6 staff does know the intent of the code. I quote the intent of the code concerning setbacks is to ensure that there is adequate separation from

adjacent uses to buffer the residences from the impacts generated by those uses. In this case the adjacent dwelling to the north is setback 33 feet from the common property line more than four times the minimum required setback of seven and a half feet. This 33 foot setback will act as a buffer from any impacts generated by the existing garage and the addition.

The proposed addition is no closer than the garage and it doesn't do anything more than attach the house to the garage. So it can't generate any greater impact that wouldn't also be buffered by the 33 feet. So that's not going to cause any problems then restricted hearings to the new standard that was imposed through the former directors interpretation is nothing more than an arbitrary abuse of the zoning departments power. No matter whether it's done at the request of the neighbor's or on it's own initiative it serves no useful purpose. It serves -- there's no public interest and it doesn't do anything more than frustrate the intent of the zoning code. It also imposes an unnecessary hardship on Mr. Litwin.

Now the neighbors here today are not going to be happy if you grant the variance. However, we've also provided letters to you from the immediately surrounding neighbors with the exception of Mr. Asher. Letters that say we don't have an objection to this. You're not going to see it from anywhere. It's not going to have an impact on the neighborhood. All of those who are most effected by this have signed a letter and a petition that says we don't have an objection for it. And for those people who do have an objection for it the forum for their concerns is the homeowners association. They can go there and make there objections to the fact that it's going to ruin the aesthetics of the neighborhood or that it's to big for the neighborhood and he's got enough house already. That's not a questionable factor that would be addressed here.

So as you've seen Mr. Litwin has relied on the actions of the county in the past in designing his additions. So regardless really of whether it was all of these that were wrong or the zoning directors interpretation that was wrong it is staff error at some point and that is the reason we are here today. If you deny him the relief that the variance process is designed to provide that is

going to be unfair.

Now, I wouldn't ask you guys to make life fair because I don't think you guys have that power but I would ask you to recognize the circumstances that brought us here, the actions of the county and how that's effected what's been done and that you make a fair and equitable decision to grant the variance. Thank you.

MR. MOORE: May I ask a question?

CHAIRMAN KONYK: Yes, you may.

MR. MOORE: Are you disagreeing that the required setback is seven and a half feet.

MS. GRIFFIN: We have disagreed and we do disagree with the interpretation of the zoning director. We continue to disagree with that. When he looked at the site plan and the code it's obvious there was always a separation standard applied and that's what should have been applied now.

MR. MOORE: And what do you think that should be. On page one where it says require seven and a half feet. What are you saying it should be?

MS. GRIFFIN: A five foot separation standard. Five foot separation per story per structure which is what has been applied in the past on all the zoning interpretations.

MR. MOORE: And I think in terms of the issue of the size of the house. My perspective is not an issue of size the question would be is it currently a reasonable use of the property?

MS. GRIFFIN: It is a residence they are going to be adding --

MR. MOORE: Are you saying the code - the issue on the property use, the size or is it more of is it currently a reasonable use of the lot -- of the property by the current homeowners?

MS. GRIFFIN: Yes, in the fact that there is -- it is a residence they presently live in but the children have grown older and they're looking for the additional living area. Now, the architect can speak I think probably to that question a little bit better than I would be able to.

MR. MOORE: I think the issue on alternate locations is not one for the county or anybody else to tell you where to put it. I think the code has to do with are there alternatives that don't require a variance. That's the issue, not whether or not it's in a particular location but are there other opportunities that don't require a variance.

So the only reason I bring this up is

because I somewhat object to the connotations that your presentation are relative to the code and what the code proposes in that presentation.

MS. GRIFFIN: In what respect?

MR. MOORE: The other thing that -- well for one thing the suggestion of other locations. That the house is big enough or not big enough. The other thing is is if there is a current impact which you would say then would legitimize the current setbacks to then extend that requirement would be no additional impact. I guess I don't understand -- I don't agree with that either. You can then make that case that you can extend the two story structure all the way down the property line at five feet with no additional impact. So I think you're going to have to address those issues for me before I maybe understand and agree with your position.

MS. GRIFFIN: First of all, with respect to the alternative designs. It wasn't my objection that staff was telling us where to put the house. The problem is that they have said that there is an alternative area available along the back. What I've indicated is is that because of the design of the '91 addition the way it was designed based upon the building director or the zoning interpretation of the separation standard that it would be difficult if not impossible then to -- they would have to reconfigure the entire traffic flow and the interior of the house to put it in the back.

MR. MOORE: Your argument is you don't want to put it there. But the issue is there is an alternative that's possible and I don't want to get in an argument I said what I had to say but I think that those are important issues that you're going to have to address.

MR. VANDERPU: For the record I'm Derek Vanderpu, I'm the architect for the project for the Litwin's. I know what Janice is trying to explain is that in 1991 we had this addition in mind this current addition, this 198 addition as a scope and that was one of the reasons why we had gotten the interpretation in writing from the county so that we would create a record for the future. So that when we came back -- in recognizing that there was some ambiguities in the existing records within the county. Had we had a different interpretation in 1991 we would have designed the additional addition differently to accommodate this in a much different fashion.

Now to try and go backwards is rather cumbersome. And I don't think in anyone's best interest because then what happens and after having been through a great deal of study as to site lines and corners and all of the rest of adjacencies with the other neighbors they start paying more blockage toward the open space and the view corners for the other adjacent neighbors. So could we have done it in '91 perhaps, you know, differently but based on the information that was available in '91 and now moving to today is why we're stuck where we are. Do you follow that train of thought?

MR. MOORE: Yeah, I guess your concern about the open space and the view that it would obstruct the view of the neighbor that's objecting.

MR. VANDERPU: Both neighbors.

MS. GRIFFIN: I'm sorry but I don't remember you had a second objection?

MR. RUBIN: I'll just follow up on what the architect was saying. What specifically would you have done if anything contemplating that definitively in 1991 had you been aware or were told that the setbacks were 7.5 feet what would you have done in the rear differently?

MR. VANDERPU: Well I think that had -- this is the '91 addition at which was predominantly a master bedroom and that we had reason internally for some bedrooms to allow for the beds of smaller children and adults. We would have changed this whole configuration in the rear to accommodate them and perhaps move this a little further out. But what clearly we were trying to do was to create this line of site as well as a line of site from this neighbor. We did not want to project any further towards the open space, towards the rear property line. That was already -- it was a building we already had.

Given the distance separation, I believe this photograph has the view from Mr. Asher's property, approximately right in here looking back through where you can see the peaks of the garage roof and then that has the superimposed addition graphically added to it. So there's -- you start seeing bits and pieces of the roof line. So this side has a great deal of landscape.

MR. RUBIN: On page 45 of our packet in the findings of fact by staff under section three, I don't where it would appear in yours, but they have an alternative development proposal drawing where

the staff says they propose a one story addition can be placed between the garage and the house. Obviously, it looks a little smaller than your proposal to meet the setbacks, but what's preventing that alternative from being built?

MS. GRIFFIN: It wouldn't provide sufficient room. If you move it back seven and a half feet there's not enough living area to qualify it for an addition. It would preclude any useful use of that particular addition.

MR. VANDERPU: That's correct, it would lose one of the two bedrooms in that space. And then they would be looking for adding a second bedroom somewhere else, thus creating another addition.

MR. MOORE: What percentage would meeting that proposal decrease the size of the room.

MR. VANDERPU: It eliminates one of the two bedrooms.

MR. MOORE: What percentage does it decrease the size of the room?

MR. VANDERPU: I don't know that without calculating it.

MR. MOORE: You don't know that it -- why would it necessarily --

MR. VANDERPU: I don't know percentages, no.

MR. BASEHART: Madam Chairman, just for the record before we get into public comment I'm pretty clear on what happened here. I know that we had an administrative interpretation hearing on a very narrow issue a few months ago, but I don't think the way that was presented provided the opportunity to really take a global look at what the situation is. I was a staff member here for eight and a half years back around when this was originally built.

In the old code there was a provision called design cluster houses which the original intent was for entire pod's in pud's to be developed that way. Where there wasn't any minimum lot size it could be just the land underneath the house or it could be a lot as big or as small as you want it and there were no setback requirements. There was simply separation requirements between structures. Five feet per story per structure. But over the years that concept started to be used in patio house pod's, in townhouse pod's, where there was an irregular configuration to the land. And there be a requirement somewhere down in the design to flip the zero lot line houses to the other side of the

lot or there was a design problem with some townhouses.

And individual single family lots were added into those as kind of a mixed kind of concept with many types of housing in different pod's. And that design cluster concept was allowed and I think that's clearly what happened here. You've got townhouses predominantly in this pod and there's a few single family homes. But by virtue of the way this thing was originally permitted allowed to be a couple of feet off of the property line I guess touching the property line in one part certainly didn't comply with the standards in effect at that time for patio houses. Certainly didn't comply with the standards in effect for conventional single families and it is a single family detached home. So it was clearly interpreted at that time to be a cluster house. And that's the way it was permitted.

And apparently in '91 there was a question about that when it came in for an addition but then the staff wrote them a letter and said well you don't need a variance 2.8 feet or whatever it is off the property line complies with the code and obviously that's a correct interpretation because this is a cluster house. And now we're in -- again in apparently the interpretation was changed when this particular addition came in and that's why we're here.

Personally I feel you shouldn't even be here. The original approval of the lot and the original building and the first addition were approved as that concept -- that provision in the code that the continuation of the allowances like you do with other types of developments in accordance with the codes that were in effect at the time it was originally built should have been what was applied. But that was brought here not exactly in that frame work as an administrative interpretation and the result of that decision is why we're back here with a variance request.

That's just a synopsis of my understanding of the situation.

CHAIRMAN KONYK: Okay.

MR. MOORE: Would it not be true that even if we agreed to the five foot setback we're still in for a variance request?

MS. GRIFFIN: No, it's a five foot separation standard. It's not tied to the property line. It's a separation standard between the

structures. And in this case there is at least fourteen feet between the closest structure which is his garage and there is thirty three feet between the structure and his house. So it's a five foot separation standard --

MR. MOORE: You understand there should be no side setbacks tot he property line?

CHAIRMAN KONYK: It's a separation not a setback.

MS. GRIFFIN: It's a separation standard.

MR. BASEHART: A design cluster house provision didn't require any setbacks on any side it was a five feet per story per structure separation.

MS. GRIFFIN: The property line merely designated the limits of your property line. But it wasn't used to determine what the setback was at that point.

MR. WHITEFORD: Can I clarify?

MR. BASEHART: Sure.

MR. WHITEFORD: Bill Whiteford for the record, I'm the acting zoning director in Marty's place, in order for us to make a decision today we need to know exactly what it is we're looking at. As a result of the inquiry that we had about Marty's interpretation a decision was made at that time that it was a setback of seven and a half feet and that's why we have the position that the variance is being granted from that setback not the separation which may have applied some years ago. And Bob is right there was something called design cluster's they typically weren't allowed on platted lots like this so they're a little different here.

This property obviously has an interesting history. Design clusters were taken out of the code in '92 and the ULDC was adopted and we don't have them any longer. But our position today and it substantiated by your decision on the interpretation of Marty's decision was to apply a setback and that's what we're looking at today. We are looking at a variance from the setback. The applicant obviously disagrees but I think we're past that point.

MR. MOORE: You have an important point and that's what I was trying to get at. We are here to talk about a setback not about what he clusters were or what it was some time in the past and I just wanted to point out even if we disagree with whether it's seven and a half or five. Even in a five foot setback which would be back in the corner of the

existing building we still would be asking for a variance.

MS. GRIFFIN: No, --

MR. MOORE: On the proposal.

MR. VANDERPU: On the existing buildings we would be.

MR. MOORE: Well, I think the proposed building as well.

MS. GRIFFIN: No, if it were a five foot separation standard --

CHAIRMAN KONYK: No, he's saying a five foot setback.

MS. GRIFFIN: Oh, five foot setback --

CHAIRMAN KONYK: Five foot setback as opposed to a seven and a half foot setback.

MR. BASEHART: There never was a five foot setback.

MS. GRIFFIN: But that's not --

CHAIRMAN KONYK: It's either a five foot separation or a seven and a half foot setback.

MR. MACGILLIS: Back several years ago there was actually three ways -- or actually I think it was back in '86 when the county attorney's office directed staff to stop interpreting a five foot setback per story in some of these old land developments that were approved prior to '73 when the planning development standards were adopted in the code. We had some that were already existing.

So this was one of them so I think that's where that interpretation came from staff back in '90. By Bruce Malinowski who's a senior planner here. When this project came in he assumed that it was in this old development it was five feet per story. That's where he came up with that memo is that they had relied on all these years until recently when they came in the last two years to build a house. When the neighbor questioned why they were building it so close. The stakes were going into the ground so -- but there was also, what Bob was talking or what Bill was speaking to was the design clusters so there's this -- the code now is clear on all our different housing types in the code.

But back in the '73 code and the '57 code there was various housing types between what the developer called it and what staff called it and what type of setbacks were applied to it. And then on top of that staff wrote notes on these mylars that could be interpreted one way or another. I

don't think the staff got into that but there was at the appeal considerable discussion on all of those notes that were written on that plan regarding these two lots that could be mislead. Leading to staff either at the building permit stage or up here at zoning exactly what housing type was this. Whether it was setbacks or separations to be applied.

So just with that this has been a difficult petition for staff taking into account there was the appeal of where we established where the Board upheld Marty's position that it was to be a setback to be applied on this lot and the fact that with all of the history of everything that had taken place on this to come up with a recommendation on this. Taking into account that there possibly are other designs that may not work for the property owner but taking into account how this will effect the other property owner as well.

CHAIRMAN KONYK: Do you have anything further you wanted to add?

MS. GRIFFIN: Not at this point.

MR. MOORE: Well, I think that was important to resolve exactly what we're talking about here. I think I'd like to hear from the public.

CHAIRMAN KONYK: We're going to hear from staff first.

MR. VANDERPU: I only have two very brief comments especially having been around since '73 and practicing especially in this part of the world and you're right this is part of the '73 original cluster. The irony of all of this is that this whole thing was in fact treated as a patio homes still clusters for the lack of noma clature because that's what we're really what we're in is sort of a noma clature twilight zone. These were not treated as single family residences. The easiest way to take a look at that is when you look at the entire addition of the allowable units they have for there density they did not treat them as single family residents because they would then be treated differently in the overall mix in the plan and so forth.

Which is only worn out by this use in 1998 we completed an addition of an existing 3600 foot house in the pod immediately adjacent that is in the I want to say Cypress Point which is a different pod but none the less the pod adjacent to this. Had been 2000 feet to 3600 foot which would be considered now, I guess, a single family house

although it was a separation standard and were permitted in '97 just slightly ahead, weeks ahead of this letter as a separation standard.

CHAIRMAN KONYK: Okay, we'll hear from the staff now.

MR. GOUSIS: Thank you, Madam Chairperson and Board members. In terms of the variance request concerning the existing garage and existing addition to the single family dwelling. The existing garage was permitted with an erroneous separation of five feet from the adjacent structure to the north and was constructed at 2.8 feet of the side property line. The subject garage has existed since 1981 without any complaints from the neighbors and it would be an undue hardship for the applicant to relocate the structure. The existing addition to the single family dwelling was permitted in 1991 with a five foot separation from the adjacent structures to the north based on an erroneous letter written by the zoning division staff at that time in 1990.

The applicant needs space for his growing family and was issued a permit to expand his residence. Considering the addition has existed since 1991 without any complaints from the neighbors it would be an undue hardship to require the applicant to relocate the existing addition. Considering the existing garage was constructed in 1981 and the addition in 1991 and they both received building permits and certificates of occupancy from Palm Beach County special circumstances and conditions do exist with respect to these structures.

It terms of the proposed additions connecting the existing garage and single family dwelling there are alternative design options for this proposed addition. Which is one of the seven criteria that needs to be considered in the Board of Adjustment staff report. However, in this case staff error may be considered a special circumstance also staff error should be considered in this case because Mr. Litwin relied on the information he was provided in 1991 and the variance may resolve in less of an impact on the neighbor in the alternative development plan. Also the home owners associations architectural review Board will have final say in terms of what gets built and where it gets built.

Based on these findings staff recommends approval of the existing addition to the single

family dwelling and existing garage and recommends denial of the proposed addition connecting the garage and the single family dwelling. Madam Chairperson.

CHAIRMAN KONYK: He's referred to an erroneous interpretation. Is it not just the excepted interpretation at the time and now you're saying it's erroneous? At the time it wouldn't have been considered erroneous at the time it would have been considered correct.

MR. GOUSIS: Right, right now it's considered erroneous.

CHAIRMAN KONYK: Okay, so at the time that the letter was written it was not erroneous?

MR. GOUSIS: That's correct.

CHAIRMAN KONYK: Okay.

MR. BASEHART: I guess we're talking about the difference between a mistake and a change in the --

MR. RUBIN: In the code.

CHAIRMAN KONYK: The interpretation.

MR. BASEHART: A change in interpretation and basically I guess Marty Hodgkins didn't agree with the long standing interpretation. We changed the interpretation which doesn't make the earlier one an error it just --

MR. MOORE: It's what the Board needs to upheld.

MR. BASEHART: That's right.

MR. GOUSIS: The Board confirmed --

MR. MOORE: We can't keep going back I want to make sure I understand. The Board has confirmed that interpretation.

MR. RUBIN: We know that there was substantial competent evidence to support the zoning director's interpretation of that section.

MR. MOORE: And that is that we would be applying here a setback from the property line.

MR. BASEHART: Well, be careful where you use the word we.

MR. MOORE: Let me rephrase it. That the issue is the setback from the property line in this case, is that correct?

MR. RUBIN: Correct.

MR. MACGILLIS: Correct.

MR. RUBIN: We have to assume that there is now seven or five foot -- I look at it that there's been now a change in code. Now there's a 7.5 setback which I interpreted earlier did not exist unless the

interpretation was it was just the five foot separation.

MR. BASEHART: How many members did we have that day. If we only had four of them I doubt if it was a legitimate vote.

MR. RUBIN: I have a question for staff. The applicant has commented that it would be insufficient room under the alternative proposal for the single family addition between the garage and the existing single family home. If staff has any different view on that.

MR. MACGILLIS: We're not architects. When somebody presents something to us what we look at more is the dimensions in the space. That if something is reasonable that the applicant is stating who is staff to judge what is reasonable to this applicant. If they can afford to put on an addition as long as it works into their space and they don't exceed the lot coverage and meet their setbacks it's not for staff to say how big that room should be. But typically what we try to do when somebody is adding an addition on that's encroaching into the setbacks we try to look at the floor plan of the house and see how the space is lining up. If it's going to create a bedroom on the opposite side of the house leading into a kitchen. I mean we try to analyze that in our recommendation.

MR. RUBIN: Did you happen to do any rough dimensions of the alternative that you had.

MR. MACGILLIS: Actually staff didn't hear that maybe the applicant could --

MS. GRIFFIN: Are you talking about the --

MR. MACGILLIS: The design.

MS. GRIFFIN: The front addition.

MR. RUBIN: Well, I'm looking at the alternative -- it's on page 45 of my backup.

MS. GRIFFIN: You're talking about this one here (indicating)?

MR. RUBIN: Yes.

MS. GRIFFIN: What you're talking about effectively is you're going to be taking five feet off the entire length of this which leaves -- I'm not very good at distances but it leaves basically a corridor that would attach the garage to the house. It doesn't leave room for living space. It effectively cuts off five feet.

MR. RUBIN: Is this something that the applicant prepared or did staff prepare this.

MR. MACGILLIS: The applicant.

MR. VANDERPU: I believe we prepared that indicating what the size would be if in fact that was the applied setback.

MR. RUBIN: Okay, so do you have any approximate dimensions of the alternative design if in fact --

MR. VANDERPU: That is not meant to be an alternative design.

MR. RUBIN: A design strictly in compliance with the code.

MR. VANDERPU: That's correct and my comment was is that would not provide the same amount of room that we would have to create that addition and another one to accommodate the second bedroom. That would accommodate one of the two bedrooms not both.

MR. RUBIN: I understand that but do you have any approximate dimensions of what you drew there?

MR. VANDERPU: I'll figure something out.

MR. RUBIN: Thanks.

MS. GRIFFIN: This is the widest part of the addition. You'd be taking off five feet of the widest part of the addition, so.

CHAIRMAN KONYK: Okay, does any other Board member have any questions of staff or the applicant. (NO RESPONSE)

CHAIRMAN KONYK: Seeing none we'll here from the opposing side and open the public portion of the hearing.

MR. REYER: For the record my name is James Reyer, R-E-Y-E-R, I represent Mr. Asher the adjoining home owner. I just want to make a point here that I see an attempt to cloud the issue here today. The 7.5 setback requirement was not just an interpretation by the former zoning director it was subject to an administrative appeal before this board and the issue here today is the variance not the fact as to whether we have a setback requirement or not. I think that's been established at the administrative appeal.

I think we have to look at this variance application as to whether the seven criteria are met and the most important criteria I think which is not met here is the hardship issue. The property in question is not occupied by it's owner in fact the property in question is vacant eight to nine months a year. The property in question is occupied by the applicants daughter during the winter months during vacation. It is not used during the year. The

argument that we are have a growing family here does not pertain to the applicant himself who doesn't live at this residence. He lives across the lake in another residence.

The proposed addition here and we agree though it's not our job to tell the homeowner what size his house should be or how to utilize the land we think that no homeowner has the right to continue to build addition, upon addition, upon addition to his land utilizing every square foot of the property. The property right now is certainly large enough to accommodate a visiting grandchildren and daughter during winter months.

Mr. Asher who is my client is the adjoining owner has eminently protested the proposed variance as you know we have been here on many occasions to discuss this issue. We feel that this will have a very negative impact of both the beauty and the value of this property. As Ms. Griffin has said to you before Mr. Asher when he did buy this property did go down and researched the issue as to whether it was in fact a setback requirement. Mr. Asher had lived four doors down from this property in a townhouse property which of course was not effected because it was an attached villa. He wanted to make sure when he bought this property he did have wide expansive land. Again he has a nice view, he has a nice setback, he does not want to see this property built to the fact that the adjoining property comes very close to his property line.

There's been some testimony today that the adjoining homeowners have in fact agreed to this proposed variance. We submitted a petition to the board showing that of 48 homeowners in this community 34 have signed the petition that we have submitted objecting this proposed addition. In addition to that Mr. Litwin has sent a petition of his own which has several homeowners which have agreed to the variance. However we've supported -- sent in support three letters from homeowners who had signed the petition in a sense withdrawing their consent to this variance. As they saw the true plan that was going to be accomplished they felt that their consent was not gotten through proper revelation of facts.

Finally, I want to bring to the Board's attention that this is in fact a homeowners association community. The Board of Directors of this association has eminently stated that they will

not consent to the proposed addition. This is not in the sense something that you should be concerned with, but somewhere down the road this is not going to get approved regardless of what you do here today. We have several board members here to testify, we have several who have been here on previous occasions. We're opposed to this and are not going to approve this. In addition the master association which controls all of the properties in Boca West has expressed their disapproval of this variance as well.

There are two other variances, one is on the existing garage which we're not going to address we have no opposition to that. We would like to bring to the Board's attention that we have submitted a survey of our own on the existing structure the 1991 addition which does show an encroachment on the property. We would like the Board to take that into account. Granting the variance on that item would perhaps constitute a taking of the property. Again, Ms. Griffin has submitted a survey which doesn't show that. Staff and myself has scratched our heads because we have these competing surveys which don't match with each other, but please take that into account. I'm going to close my remarks because several other homeowners are here, Mr. Asher is here as well so I don't want to take too much of their time. Thank you.

CHAIRMAN KONYK: Now, for the members that weren't present last month there were several homeowners that spoke on behalf of Mr. Asher. We will not be hearing from those same homeowners again today, that was the agreement.

MR. REYER: Unless they had something different to add, I believe.

CHAIRMAN KONYK: Well, unless they have something different to add. Substantially different.

MR. REYER: And Mr. Asher the adjoining homeowner is here and he did not testify.

CHAIRMAN KONYK: Well, he would be allowed anyway.

MR. REYER: Okay, any questions?

MR. RUBIN: Well, if Mr. Asher is going to speak I'll wait until he speaks and he may answer a question.

MR. REYER: Okay, thank you.

MR. MOORE: My question was you said you have a competing survey?

MR. REYER: Yes.

MR. MOORE: Do we have that here?

MR. REYER: Yes.

MR. MOORE: Do I have it in this packet?

MR. GOUSIS: No, it was submitted after that.

MR. MOORE: Alright, well at some point I would like to see that.

MR. GOUSIS: Okay.

MR. ASHER: Good morning my name is Stuart Asher.

CHAIRMAN KONYK: Was everyone sworn in?

MR. ASHER: Yes, I was.

CHAIRMAN KONYK: If you weren't sworn in and you come up to speak please let us know and we'll swear you in at that time.

MR. ASHER: Good morning, before I proceed I would like to remind the Zoning Board that on November 19th and December 17th when meetings were postponed there were eighteen other homeowners including four of the five Cypress Point Villas members here to oppose the variance under discussion today. Unfortunately jobs and other commitments prevented others from appearing.

I am the neighbor who is most effected by the second addition. The proposed encroachment would be right next to my property and would sharply detract from the value and beauty of my property and my peaceful enjoyment of it. I purchased this property which cost me certainly more than any other in this village of 51 villas because it was natural beautiness and the openness of the property. I most certainly did not buy a zero lot line property.

I was told when I bought the property that nothing could be done with the existing garage and the existing extension. So I never proceeded to do anything about that. I had contacted a few lawyers and unfortunately at that point when I bought the house my wife died and anyway well she got very sick excuse me and for the past three or four years after that I was not down here. I just moved down here permanently only last year or two years ago when this new problem came up. And that's why I decided to start fighting this and found out it was illegal, the original, and that to did not have a variance.

I never would have purchased it if it were a zero lot line with construction permitted to the property line. As Mr. Reyer had said prior I owned another house four homes down and what attracted me

to this house was the openness and the beauty of this lot. I did research the zoning regulations I was informed there was a seven and a half foot setback. That's before I bought the home -- a requirement that a house could never be built next to my property line or another addition.

My home is within a controlled environment with bylaws and regulations designed to protect property owners from those who believe they are beyond the law and should even be able to change it. The zero lot line property abutting mine would sharply decrease the beauty and value of my home. I had taken pictures before all of this lushness came, may I?

CHAIRMAN KONYK: Sure.

MR. ASHER: This is the property before I spent thousands of dollars trying to just cover what was already there. This is how it looked before I put all that lush landscape.

MR. MOORE: This is a picture of your landscape?

MR. ASHER: Well, I didn't even look at that, yes.

MR. MOORE: You put that in?

MR. ASHER: I put all of that in. That's how it looked before.

MR. BASEHART: Can we have these for the record to keep in the file?

MR. ASHER: Yes, of course. A zero lot line property abutting mine would sharply decrease the beauty and value of my home. I feel a person cannot dwell on every square inch of land that it is not zoned for. The Zoning Board already denied Mr. Litwin's appeal in September and continuing with an error is like continuing with any wrong. The error is only compounded.

As Mr. Reyer said Mr. and Mrs. Litwin do not even reside in the home but live for about four months each year on a double plotted land across the way. Here's a picture of Mr. Litwin's home across the lake. According to their attorney I'm probably envious but believe me I'm not. The four bedroom home in question is occupied by their daughter and son-in-law and their daughter's occasional visiting grandchildren during the winter. As Mr. Reyer said the house stands empty for approximately eight to nine months each year.

The house is already larger and higher than any other Cypress home or villa. The village is not

meant to support the size being sought. To allow the proposed encroachment the following shrubs on his property that would have to be cut down would be three 20 foot palm trees, one 15 foot mobilini, two 15 foot strag or fig trees, one triple 20 foot eureka palm, a large planting of three foot mature plants and other heavy foliage. Instead there will be a continuance of walls and buildings and more irregular roof tops.

It's quite a sad exchange for the beautiful community of Cypress Point Villas and for me. The Cypress Point Villas Board is unanimously opposed to the variance. Board members are here today to voice their opposition. The Boca West masters association is also opposed to the granting of the variance. Please act to preserve the existing regulations, turn down the proposed expansion for which there is no better term than on the yellow sign posted in the yard garage encroachment. It would overwhelm the property and drastically detract from the property values and character of the neighborhood. I am impressed by the professionalism of the Zoning Board and it's employees and greatly appreciate all the time, effort and expense that the Zoning Board has expended over the past 18 months in it's effort to preserve the property values and attractiveness of the community.

CHAIRMAN KONYK: Okay, thank you. Anybody have any questions?

MR. RUBIN: I do. Have you seen the applicants alternative design proposals?

MR. ASHER: No.

MR. RUBIN: Are you looking at the same thing I have here?

MR. ASHER: Yes.

MR. RUBIN: Do you see where they have one of their alternatives in strict compliance to the code to the rear of their property?

MR. ASHER: Do I see what you're referring to?

MR. MACGILLIS: This here that they're meeting the rear setback.

MR. ASHER: Okay, I see that.

MR. RUBIN: Is that something that you would be in favor of as the adjoining homeowner, something to be built in the rear of his property in complying to the code.

MR. ASHER: Well, I can't really discuss what we're talking until I really see it staked out

and see it in person. I'm just talking about his proposed addition right now. I can't -- I'm really not able to give you an answer on that proposal. I'm just fighting what is proposed.

MR. RUBIN: Okay.

MR. ASHER: I don't think we should -- truthfully I don't think we're here to discuss if this is denied will I approve that.

MR. RUBIN: No, the question is if this is denied if it's in compliance with all the items in the code.

MR. ASHER: Well, he has a right to apply for another -- to go to our Board and to apply for such and extension and start the process all over again with that. That's where it starts with our Board who is unanimously rescinding -- well not even rescinding. Saying that they do not want the proposed addition. I really don't think I should comment on this.

MR. RUBIN: The question really went to -- I was just wondering your opinion on something that can't be changed but if the structure is built behind the home does that more effect your view than if it's built in front of the home.

MR. ASHER: Well, that's why we have a Board. If it will obstruct my view then evidently they won't allow it or not just my view everyone on the lake.

MR. RUBIN: I understand your response. When you first purchased the property is it a correct fact that the garage existed and the single family home existed without the proposed addition obviously.

MR. ASHER: Well, I thought it was the ugliest thing but of course I --

MR. RUBIN: But the garage existed.

MR. ASHER: Well, I had to live with it there it was already installed. But of course the rest of the land as you saw the landscaping that I put in just covered everything. It's like putting lipstick on a hairlip. I did the best I could to cover up what was already there.

MR. RUBIN: Well, the follow up question was I was wondering are you relying upon the seven and a half foot side yard setback and the garage that existed was clearly within the seven and a half feet of the side yard setback. I was wondering when you said you researched it would the zoning --

MR. ASHER: The zoning told me that the

garage was illegal.

MR. RUBIN: Illegal?

MR. ASHER: Illegal, it was an illegal building that they couldn't understand how it was even approved in 1981, the way the garage was set. However, they told me at that point that nothing could be done about it because it was up since 1981. So of course I did not do anything about it.

MR. BASEHART: Well, I think the issue is it got permits -- it wasn't illegal because they applied for, received, got permits, had inspections and received a certificate.

MR. ASHER: Mr. Basehart, I'm only stating verbatim what the zoning department told me in Delray when they saw the site plan. I'm only repeating what they said and couldn't understand how a garage of that nature situated the way it was was approved to start with. But I wasn't here to fight that what it was. I had the rest of the land and the beauty -- I keep saying the beauty of that is why I bought this piece of property.

My home is no larger than any of the other 50 properties other than Mr. Litwin's property right now. They're all the same, they're either two bedroom or three bedroom. It's a small community of small homes. We're in a village of 50 other villages.

CHAIRMAN KONYK: Okay, we need to move forward we all have meetings that we have to be at. Is there any member of the public that's going to add anything to this item?

MS. GRIFFIN: Excuse me, is it possible to ask questions of Mr. Asher?

CHAIRMAN KONYK: Well, let's get the public comment out of the way. While we're waiting I have a question, Peter, just a clarification. If this addition is allowed will this exceed the coverage that's allowed on the lot.

MR. GOUSIS: No.

CHAIRMAN KONYK: So even with the addition being added -- it's really not a matter of what size it is or what size it isn't if it's allowed it still would not exceed the --

MR. GOUSIS: The size that they are proposing I checked it and it was just under the lot coverage.

CHAIRMAN KONYK: Okay, just so everybody understands that.

MR. BASEHART: So it wouldn't be over

building in terms -- with respect to what the code limit is?

MR. MACGILLIS: Correct.

CHAIRMAN KONYK: It would be within.

MR. GOUSIS: It would be within.

CHAIRMAN KONYK: Okay, thank you.

MR. MOORE: If they went over they would need a variance for that to.

MR. MACGILLIS: Right.

CHAIRMAN KONYK: But I just wanted to clarify that because everybody keeps talking about the size of the structure and I wanted to know if it was built would it exceed the coverage that's allowed on the lot and Peter clarified that it will not. Thank you.

Your name for the record?

MS. KINGSLEY: My name is Rita Kingsley.

CHAIRMAN KONYK: And you have been sworn in, correct?

MS. KINGSLEY: Yes.

CHAIRMAN KONYK: Okay.

MS. KINGSLEY: I reside in the Village of Cypress Point Villas and I am also on the Board. It has always been the policy of our Board to maintain a harmonious atmosphere in the village. We are a very small 51 home kind of a sleepy hollow kind of existence. And prior requests that we have received have always been given to the neighbors who are directly effected by the request. And when there was ever any opposition from the resident we immediately disallowed the request. We feel that there is such a tremendous disapproval on the part of Mr. Asher who is immediately effected by this that it would not be fair to him. Since his property is set much further back then the Litwin property and the minute he walks out of his house he see's this property. And quite frankly we just feel that other residents that have requested dormers and whatever have been turned down and we do not feel that it is fair to Mr. Asher to have this request approved. Thank you very much.

CHAIRMAN KONYK: Thank you.

MR. MOORE: May I?

CHAIRMAN KONYK: Yes.

MR. MOORE: Has there ever been a request for approval by the homeowners association for this structure?

MS. KINGSLEY: Has there ever been a request by the homeowners association?

CHAIRMAN KONYK: Has there ever been a request by the homeowner to the association.

MR. MOORE: For approval of this project.

MS. KINGSLEY: I'm sorry, I'm not sure. I thought that the homeowners association informed us that they would deny it.

MR. MOORE: Has there ever been a petition in which you either approved it or denied it?

MR. ASHER: May I answer that question?

MR. MOORE: Sure.

MR. ASHER: The original approval was given about 20 months ago by one board member unilaterally by himself with no other Board member involved which is totally illegal in our bylaws.

CHAIRMAN KONYK: Do you have an architectural review committee in your community?

MR. ASHER: Yes we do.

CHAIRMAN KONYK: Did the architectural review committee give Mr. Litwin permission to build this addition? I don't think you're the person to ask. I think we need to ask the applicant that question.

MR. ASHER: Okay.

MR. GOUSIS: Madam Chairperson, I have a letter here from the masters association concerning that. Do you want me to read it?

CHAIRMAN KONYK: Yes, I would like you to read it.

MR. GOUSIS: This is from William Raymond, I guess, president of Boca West Masters Association. Dear Mr. MacGillis, on behalf of this corporation I am writing to inform you that the petition on Mr. Leonard Litwin and his wife is opposed. By excepting a deed to own property in Boca West all lot owners are due to the covidence recorded in Palm Beach County clerks office that no alterations to a home may occur without first receiving written permission from the Boca West Masters association. At this time no approval is on file as we await the filing of a petition by the Litwin's for alteration of their home. They have been notified in writing of this corporations position in this matter. If you have any question please feel free to let me know, Sincerely, William Raymond.

CHAIRMAN KONYK: So he's saying they had not applied for an approval?

MR. GOUSIS: Right.

CHAIRMAN KONYK: So they haven't received it.

MR. REYER: I have a letter from the local association.

CHAIRMAN KONYK: Well, let's move.

MR. REYER: Do you want me to read that or -

CHAIRMAN KONYK: Well, I think he's coming forward to address something so lets here from him and then we'll hear from you.

MR. VANDERPU: Before we completed the work on the garage we obtained the approvals from the local association and the master. You can't get to the master without getting through the local.

CHAIRMAN KONYK: Correct, but what was the - what did the local association say.

MR. VANDERPU: And they are being approved upon.

CHAIRMAN KONYK: From this point forward we are going to continue with the public portion of the hearing. We are not going to ask any questions until the public is done. Okay, if the Board members could cooperate with that so that we could get through here. Is the next person prepared to speak?

MR. Ray: Yes, I am.

MR. REYER: Could I address that point?

CHAIRMAN KONYK: We'll address it after the public portion, it's more appropriate.

MR. RAY: My name is Herbert Ray, I serve on the Board of Directors of the homeowners association in Cypress Point Villas.

CHAIRMAN KONYK: Mr. Ray did you -- you were sworn in right?

MR. RAY: I testified at the last meeting that we had however this is in addition.

CHAIRMAN KONYK: Okay, but I said were you sworn in at the beginning?

MR. RAY: Yes, I was. Thank you. I also serve on the architectural committee for this particular homeowners association. We have never had a meeting were we have discussed this thing as a group. It was unilaterally approved and it was never put into our minutes. There was no record of this meeting ever being held that the approval was sent forth from. I just thought the Board wanted to know that.

CHAIRMAN KONYK: Thank you, is there anybody else from the public that would like to address this issue that hasn't spoken before?

(NO RESPONSE)

CHAIRMAN KONYK: Okay, I'm going to close

the public portion of the hearing at this point other than for you to have some discussion from your attorney.

MS. GRIFFIN: I was going to say may I ask just a few questions of Mr. Asher?

CHAIRMAN KONYK: Yes, you may. Can you go to the mic.

MS. GRIFFIN: Mr. Asher has indicated that he feels that this detracts from his value and from the views of his home and I was hoping to get a more specific description of what he was looking at. There was also a discussion of how he walks out of his home and he can see his property. This is his property here it's designed on this angle and the views are mostly towards the lake area, which is the open area in the back which is here.

First of all, to address the alternative design if you put it back here it is definitely going to interfere more than if you put it here. Secondly, coming from this angle he does not see from his house he cannot see the addition except when at his garage. So it's not detracting from his view from his home. Apparently the only thing he is complaining about is if he drives into his driveway and looks to the right he will see. With respect to the issue of the landscaping, Mr. Litwin had offered when this issue first came up, had advised him that he would be happy to arrange landscaping to help address the issue of whatever his concerns were with the view.

And again just to make it clear the existing property there is not illegal. They were all properly permitted with CO's issued and there was no question of their illegality. And with respect to the homeowners association it's my understanding that there were approvals from each of them they have since been rescinded because of the expiration of the time limit and because of the opposition of Mr. Asher has raised.

The only reason that we are here requiring and needing a variance is because of Mr. Asher's request from and the interpretation that was given to him by Mr. Hodgkins. Mr. Hodgkins did not make the interpretation based on his own initiative. There was a request that was given to him by Mr. Asher to confirm his understanding of the seven and a half foot setback. And again the interpretation was challenged but it was upheld at that point.

So I guess my only question to Mr. Asher

would be specifically what is it about this addition that will detract from his home. And also I want to make sure he's not under the misconception that this is a zero lot line addition. Because we are going no closer than the existing improvements that are on the property.

MR. REYER: At this point I'll bring out this proceeding is not subject to cross examination. I think Mr. Asher has stated what his opposition is.

CHAIRMAN KONYK: Yes it is.

MR. REYER: Well.

CHAIRMAN KONYK: I'm the chair.

MR. REYER: Okay.

MR. ASHER: What more can I say I feel it's going to be ugly. I think it's going to be detrimental I can read the letter over again.

CHAIRMAN KONYK: No, that's okay.

MR. ASHER: I put all of this landscaping. If I didn't it -- I didn't spend 12 thousand dollars in landscaping to cover something and not have to see what it's going to look like.

CHAIRMAN KONYK: If your going to spend 12 thousand dollars in landscaping to cover something than how do you see it?

MR. ASHER: When you drive up to the building you still see everything.

CHAIRMAN KONYK: I mean what's the point about the landscaping I don't understand that?

MR. ASHER: I tried to cover the existing extension as much as possible by putting as much vegetation over there as possible. You most certainly still see it. I'm sorry I'm not explaining myself.

CHAIRMAN KONYK: I don't understand what the point was. If you put in 12 thousand dollars worth of landscaping and it covers it.

MR. ASHER: It doesn't -- it doesn't cover it completely. It just --

CHAIRMAN KONYK: Do you want more landscaping.

MR. ASHER: No, I just don't want anymore buildings that I have to worry about or that's going to --

CHAIRMAN KONYK: I understand I just thought that you meant the 12 thousand dollars in landscaping had something to do with this variance. I apologize.

MR. ASHER: No, no not at all. I'm just trying to make my property look pretty. Now the

fact that I live in the house and I don't see the front, the front is still my property. I put in a tremendous amount of time and effort into it.

CHAIRMAN KONYK: Okay, thank you. Anything else.

MR. REYER: I just want to clarify the homeowners association issue here. What had happened in the summer of the previous year, I'm sorry, of '97 one of the members, Mr. Haberman, of the Board who's on the architectural review board had given his consent to having this done without following the homeowners association proceeding without ARB approval. Some of the ARB members are here. I just want to read very briefly a letter from the associations attorney Mr. Ronald Deanna which is addressed to Ms. Griffin's firm. And it states: I am the attorney who represents Cypress point Villas Homeowners Association in connection with the above referenced matter. I have been provided with copies of both the Boca West Masters Association Architectural Control Committee petition and April 23, 1998 Palm Beach County Department of Planning and Zoning and Building Correspondence to you. At the present time the association is investigating the validity if the proported association approval from Mr. Litwin and initial home alteration request.

However, as a consequence of Palm Beach Counties deqination of Mr. Litwin's home modification request, that would be the administrators appeal I think they are referring to, please except this letter as a reminder Mr. Litwin will need to submit a new architectural approval request to the association for it's consideration. Unless and until the association of Palm Beach County are obtained please advise your client that no construction will be authorized and should not begin.

At this point I don't think that here's approval on the Board.

CHAIRMAN KONYK: And as we all know it really doesn't matter to us if there is approval or not.

MR. REYER: Exactly.

CHAIRMAN KONYK: But I just thought I'd let you clarify that for your own.

MR. REYER: Okay.

MS. GRIFFIN: Mr. --

CHAIRMAN KONYK: Wait a minute. At this

point the public portion of the hearing has been closed.

MS. GRIFFIN: Before let me just -- Mr. Litwin has letters from the surrounding neighbors. The most immediately adjacent neighbors.

CHAIRMAN KONYK: Oh, you have some public you would like to bring forward.

MS. GRIFFIN: I would like to go ahead and read then. You have copies of them that were provided.

CHAIRMAN KONYK: Just briefly give us a synopsis.

MS. GRIFFIN: Ms. Charofilo (ph) who is the woman who lives here next to Mr. Asher's house.

CHAIRMAN KONYK: Quiet out there.

MS. GRIFFIN: I have no objection to Mr. Litwin building an addition to his house connecting his house to the garage. It can't be seen and will have no effect on the neighborhood. My house adjoins Mr. Asher's house immediately to the left and is one house away from the Litwin house.

Mr. Seltzer (ph) who lives at 20492 which I believe is just either to the south of or across the street from -- I'm a neighbor of Mr. Litwin's living in the community and would not oppose the addition he wishes to build to his home. It is located in an area on his plot that cannot be seen from the street and would not be detrimental to the community. As a matter of fact it cannot even be seen from Stuart Asher's house his supposed neighbor.

CHAIRMAN KONYK: Well, okay.

MS. GRIFFIN: And 200546, Mr. Speigel (ph) -

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CHAIRMAN KONYK: You don't have to read the letter just tell us if he approves it.

MS. GRIFFIN: Just briefly the addition he wishes to build will in no way have a detrimental effect on the neighborhood. It is not possible to see the addition from the street as you drive by. It does not adversely effect the neighbor, cannot be seen from his house, doesn't block his --

CHAIRMAN KONYK: Wait a minute I don't want to hear what the -- I don't have to hear the whole letter. And whether or not he thinks it effects the neighbor is not relevant. If the neighbor thinks it effects the neighbor then it effects the neighbor.

MS. GRIFFIN: Mr. Litwin's addition should not be held up since there is no adverse condition

created to the neighborhood.

I'm Mr. Litwin's next door neighbor living at the right side of his home and would not oppose the addition he wants to build. It would have no effect on the neighborhood being set between the house and the garage. You can't see it from the roadway and it doesn't effect the community, I have no objection.

Mr. Moskowitz (ph) who lives at 20450 about four houses down, the area is located where it can't be seen from the street it will have no effect on the community, it is also in an area away from Mr. Asher's home behind a screen of planting. It doesn't effect the community I would not oppose the addition.

Mr. Bleckman (ph) who lives at 205 --

CHAIRMAN KONYK: Okay, he supports it. I don't need you to read the whole letter.

MS. GRIFFIN: I'm not telling you the whole letter.

CHAIRMAN KONYK: I don't want to hear any of the letter. Just tell me if they supports it. This meeting is going on way to long.

MS. GRIFFIN: Okay.

MR. RUBIN: I want to hear all of the letter.

CHAIRMAN KONYK: Well you can stay after the meeting and hear them.

MS. GRIFFIN: I have copies for you if you would like. I have copies for everyone if you-all would like it.

CHAIRMAN KONYK: If you want to give me a copy I'll be happy to take it.

MR. BASEHART: I'm afraid to read it.

CHAIRMAN KONYK: Well, you know, I'm trying to move this along here so we can all get out of here. I have a meeting at 11:30 that I'm going to have to miss if we go much longer.

MR. MOORE: Just don't go.

CHAIRMAN KONYK: I have to go.

MR. REYER: I have to apologize but I have my letters to. I have 34 signatures on a petition --

CHAIRMAN KONYK: So submit them we'll be happy to take them.

MR. REYER: First letter Ms. Griffin read she has sold her house and is moving so she has no concern.

CHAIRMAN KONYK: Whatever, she did when she

wrote the letter so.

MR. REYER: Well, it's easy to agree to something if your not effected by it.

CHAIRMAN KONYK: Okay, public portion of the hearing is closed at this point. Do any Board members have any questions that they would like to ask?

(NO RESPONSE)

CHAIRMAN KONYK: Seeing none is anybody prepared to make a motion here?

MR. BASEHART: I'm prepared to make a motion. I guess we have talked about this all we need to. This is BOFA 98-93, I believe, and I'd like to make a motion for approval of the variances as outlined in the staff report and legal advertisement. First of all with respect to the variances are actually to apparently correct violations that are existing structures they don't represent any new construction. I -- personally I don't believe that these variances should even be required because at the time the buildings were permitted the clear consistent interpretation of the code was that these buildings met the required setbacks. There's been a change in the interpretation but I don't believe that should effect something that had already been built in accordance with a previous interpretation and CO.

However, they are on this agenda and for those reasons and also because I believe that they comply with all of the seven standards in the code for the issuance of variances my motion for approval is made for those to. With respect to the new addition I believe again that there's been adequate demonstration that the criteria in the code for granting of the variances has been met. And also looking at all of the site plans and photographs and everything else that we received and the alternative designs that were presented.

It appears to me or my conclusion is that if you move the proposed addition back a couple of feet so that it complied with a seven and a half foot standard it wouldn't make the impact on the surrounding property or the adjacent property any different then it is with the reduced setback. What it would do though is make that area functionally inadequate because it would be -- the addition would constitute I think simply a corridor between the existing buildings and not have a functional purpose or be able to used adequately. I think the

alternative of putting the addition in the rear while it maybe determined to meet the code would have a severe negative impact on the surrounding property owners and their enjoyment of the open space.

So based on that and I think also a real important thing in my conclusion on this matter is that I think the existing structures were permitted under an interpretation and provisions in the code that existed at the time they were built. They were built with permits, they were inspected, they were given certificates of occupancy and I think that the owner of the property should have an ability to be able to put additions or improve the property consistent with the regulations that were in effect at the time that the building was originally built. That combined with the fact that after looking at all of the evidence I see no legitimate negative impact on any surrounding property owner. I feel that the variances are appropriate and that's my motion.

CHAIRMAN KONYK: We have a motion for approval do we have a second?

MR. WICHINSKY: Madam Chair, I'd be inclined to second the motion, however, before I do I'd want the staff to consider any conditions relating to buffering -- strict buffering requirements in the event that the motion carries.

CHAIRMAN KONYK: Or in the event that the motion carries are there any conditions you would impose.

MR. MACGILLIS: One would be the typical. The applicant shall obtain a building permit or excuse me. By September 21, 1999 the applicant shall obtain a building permit for the 480 square foot room addition as shown on BOFA 98-93 exhibit 25. There shall be no openings on the north side of the proposed additions. As far as landscaping I haven't been out to the site so I don't know what's in between, is there landscaping in there now.

MR. VANDERPU: Yes.

MR. MACGILLIS: If we could word the condition that staff -- it has to be supplemented because I'm not sure what's in there now so prior to the issuance to the certificate of occupancy for the room addition there will be, zoning BOFA staff shall conduct a site visit to ensure the existing landscape buffers the proposed addition from the adjacent property and if it does not addition shrubs

and shade tree's will be required to be installed.

CHAIRMAN KONYK: Okay. Before we have a vote on this --

MR. BASEHART: I would like to add those conditions to my motion.

CHAIRMAN KONYK: Okay, but before we have a vote on this I need to ask the applicant if they would agree to those three conditions if the motion were to be approved?

MS. GRIFFIN: They have already been agreed to. The proposed addition does not have any opening on the front, they of course have attempted to, -- yes, yes and yes.

MR. COHEN: With those conditions I'll second the motion.

CHAIRMAN KONYK: We already have a second. You can third it though.

MR. COHEN: Oh, you already have a second.

MR. WICHINSKY: I said it you can record it as Harold seconding it.

CHAIRMAN KONYK: Okay, we have a motion by Mr. Basehart and a second by Mr. Cohen any discussion.

MR. MOORE: I just want to bring us back to where I think we are. One is clearly a setback issue and one of separation so that's the variance request. In respect to what was said I want to get back to that fact. Second of all relative to the seven criteria, one of the ones that's most important to me is the one of self created. Is the variance requirement made because of what the petitioner himself being self created and in this case obviously it is because the petitioner proposing to build a structure into the setback requirements and that's what's requiring the variance. So it doesn't meet one of the seven criteria's for me and I think that's very important and there's nothing particular to the land in that case.

It appears also that the homeowners association has not approved it although that's not necessarily relevant. It's also not a popularity issue here as to how many say yes it's okay and how many think it's not okay. I also think that currently there is no reasonable use of the land. And also one thing that's very important in giving the variance request approval is are there alternatives while the petitioner may not like it are there alternatives that would not require a

variance. And I think for all of those issues that this variance request should be denied because it doesn't meet the seven criteria.

CHAIRMAN KONYK: Mr. Rubin?

MR. RUBIN: Mr. Moore's comments relative to the proposed addition I am in agreement with and I won't repeat that. However, I have no objection to the existing garage and the existing single family home which are presently violate the new interpretation to be granted. My interpretation of that is when they were built -- when they were co'd the code at that time wasn't perfect allowed the structure some separation interpretation. And it's a subsequent change in that interpretation which now applies. But I also think we need to apply the new code which was effected when this Board ruled that the 7.5 foot setback is applicable.

And with regard to the proposed addition my opinion reasonable use of the property and several alternatives. I'm not sure Mr. Asher may like an alternative in the back but that's not for me to consider. I'm just looking at whether it's a reasonable use of the property presently existing and I think there is and therefore there's no unnecessary hardship created by disallowing the proposed addition.

MR. MOORE: Just to make it clear my points were to the proposed addition and I would certainly support the first two.

CHAIRMAN KONYK: Okay, we have a motion and a second --

MR. WICHINSKY: Madam Chair, are we voting on each variance separately.

CHAIRMAN KONYK: We can vote on each variance separately if you'd like. On the first variance the property side interior setback.

MR. BASEHART: Do we have to amend the motion? I prefer to just go down all three and if the motion doesn't pass then we can go back and --

CHAIRMAN KONYK: That's true we should go ahead with the motion. So we're voting on all three. Okay, so do you want to poll the Board?

MS. MOODY: Mr. Cohen?

MR. COHEN: Yes.

MS. MOODY: Mr. Bob Basehart?

MR. BASEHART: Yes.

MS. MOODY: Mr. Stanley Misroch?

MR. MISROCH: Yes.

MS. MOODY: Mr. Gilbert Moore?

MR. MOORE: No.

MS. MOODY: Mr. Steven Rubin?

MR. RUBIN: I'll say no on proposed, yes on the two existing but overall it has to be no based on the motion.

MS. MOODY: Mr. Glenn Wichinsky?

MR. WICHINSKY: Yes.

MS. MOODY: Ms. Chelle Konyk?

CHAIRMAN KONYK: Yes.

Motion carries five to two. We'll take a five minute break before the next item.

STAFF RECOMMENDATIONS

APPROVAL IN PART (EXISTING ADDITION AND EXISTING GARAGE) AND DENIAL IN PART (PROPOSED ADDITION), based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT

YES. Variance request concerning existing garage and existing addition to SFD: The subject property is located in Cypress Point Villas, Hamlet V, within the Boca West PUD and is approximately .25 miles north of Glades Rd., approximately .5 miles west of Powerline Road. The subject site has a Agricultural Residential (AR) zoning designation with a Special Exception (SE) to allow a Planned Unit Development (PUD). The Palm Beach County Comprehensive Plan Future Land Use is Low Residential 3 (LR3). Boca West PUD was one of the first PUD's approved in Palm Beach County. Boca West PUD Special Exception Approval was granted October 2, 1969, pursuant to Ordinance 3-57, as amended.

Special circumstances and conditions do exist which are peculiar to the parcel of land, building, or

structure, that are not applicable to other parcels of land in the same district. The existing garage was permitted (B81 03104) with an erroneous separation of 5 feet from adjacent structures to the north and was constructed at 2.8 feet from the north side property line. The correct minimum setback for the garage is 7.5 feet from the north side property line according to the certified site plan and the Code in effect at that time. However, an incorrect 5 foot separation from adjacent structures to the north was applied to the permit application by County staff at the time of permitting. The subject garage has existed since 1981, and it would be a hardship to the applicant to relocate the structure. The granting of the variance will not be injurious to the area or to the public welfare. The existing addition to the single family dwelling was permitted in 1991 (B91 -23889) with a 5 foot separation from adjacent structures to the north based on an erroneous letter written by Zoning division staff in October of 1990. The addition was constructed 5 feet from the north side property line. The correct setback for the garage is a minimum 7.5 feet from the north side property line according to the certified site plan and the Code in effect at that time. The subject garage has existed in its current location and configuration since 1981 and the subject addition has existed at its current location since 1990, without any complaints from the neighbors. The applicant submitted for and was granted permits for both structures by County staff. To demolish and relocate the structure would result in a large financial hardship to the property owner and would be unfair since the property owner followed the appropriate permitting procedure for the subject structures. Taking this information into account, special circumstances and conditions do exist which are peculiar to this parcel of land.

NO. Variance request concerning the proposed addition to the single family dwelling and garage: Special circumstances and conditions do not exist which are peculiar to this parcel of land, building or structure, that are not applicable to other parcels of land in the same district. As previously mentioned in the variance summary of this report, it has been determined by the Zoning Director and Confirmed by the Palm Beach County Board of Adjustment, that the minimum north side interior

setback for the subject property is 7.5 feet. The applicant is proposing an addition (480 s.f.) to the single family residence that would connect to the detached garage and is proposing a 2.8 foot north side interior setback. The applicant has been issued permits for (B91 -23889) and constructed an addition to the residence in 1991. Therefore, by allowing a second addition to the residence that requires variance relief of 4.7 feet is an over utilization of the property. Furthermore, as delineated by the alternative development plan submitted by the applicant, there are alternative design options available to the applicant which would preclude variance relief. Considering the above information, special circumstances and conditions do not exist which are peculiar to this parcel of land, building or structure.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. Variance request concerning existing garage and existing addition to SFD:

Special circumstances and conditions are not the result of actions of the applicant. Both the existing garage and the existing addition to the single family dwelling were issued permits by the County. However, in both cases, erroneous setbacks were applied by County staff and the subject structures were built in the north side interior setback area based on these erroneous setbacks. The applicant is now applying to the Board of Adjustment to make the structures legal nonconforming.

YES. Variance request concerning the proposed addition to the single family dwelling and garage: Special circumstances and conditions are the result of actions of the applicant. The applicant is proposing an addition (480 s.f.) to the single family residence that would connect to the detached garage and is proposing a 2.8 foot north side interior setback. The existing residence is 2,609 sq. ft. in floor area. The subject lot has an irregular configuration in that the west half of the north property line slants to the north at a 45 degree angle. The lot is 10,890 sq. ft. in area and meets the minimum lot dimensions for a lot with an RS zoning designation. As previously mentioned, the applicant was granted a permit and constructed an addition to the residence in 1991. In addition,

there are alternative design options available to the applicant. The applicant could construct an addition on the front or the rear of the house and still meet all required setbacks.

3. GRANTING OF THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGES DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME:

NO. Variance request concerning existing garage and existing addition to SFD:

Granting of the variance shall not confer special privileges upon the applicant. The requested variances are a reasonable use of the property since both the existing garage and the existing addition could have been constructed in compliance with Code regulations. However, as previously mentioned in the above criteria, due to County staff errors, the existing garage and addition were constructed in the setback areas. The garage is not unusually large (500 square feet) and the house is of typical size (2,600 sq. ft.) for the area. The existing garage has been in its current configuration and location since 1980 and the existing addition has been its current configuration and location since 1991, without any complaints from the neighbors. In addition, the requested variance will not compromise the intent of the Code since the adjacent house to the north is setback approximately 33 feet from the common north side property line. This is consistent with the Code requirement of a 7.5 foot setback on each side of the north property line.

YES. Variance request concerning the proposed addition to the single family dwelling and garage: The requested variance is not a reasonable use of the property since there are alternative design options available to the applicant which would not require variance relief. There is buildable area on the front and rear of the single family dwelling which would meet all required setbacks. Furthermore, an addition was constructed in 1991 which provided the applicant with additional living area. Therefore, grant of the variance would confer upon the applicant special privileges denied by the comprehensive plan and Code to the parcels of land in the area.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF

THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. Variance request concerning existing garage and existing addition to SFD:

The other two lots with "straight" single family dwelling RS setbacks support garages which are able to be utilized for sheltering automobiles and storage. To require the applicant to demolish the existing garage and addition would result in an unfair hardship upon the applicant. As previously mentioned in the above criteria, both the existing garage and addition received building permits from Building Division. However, in both cases, erroneous setbacks were applied to the garage and addition. The existing garage and addition have been in their current location for the past 8 years. The adjacent property owner to the north has planted a thick vegetated buffer along the common side property line which will mitigate any impacts of the variance requests.

NO. Variance request concerning the proposed addition to the single family dwelling and garage:

A literal enforcement of the terms and provisions of the Code will not deprive the applicant of rights commonly enjoyed by other parcels of land in the same district. The applicant constructed an addition to the single family dwelling in 1991, which resulted in an expanded living area for his growing family. To allow variance relief for a second addition when there are alternative design options available to the applicant would not be consistent with the seven criteria necessary to be granted a variance.

5. THE APPROVAL OF THE VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. Variance request concerning existing garage and existing addition to SFD:

The existing garage and addition could have been constructed consistent with a 7.5 foot side interior setback. However, due to an error during review and permitting of the subject structures, the garage was constructed 2.8 feet from the north side property line and the addition was constructed 5 feet from the north side property line. Considering it would

cause an undue hardship to on the property owner to demolish and relocate the structures, the approval of the variance is the minimum variance that will allow a reasonable use of the property. In addition, there will be no negative impacts associated with the variance requests since the garage has been existing since 1980 and the addition has been existing since 1991 in their current configuration and location, without complaints from the adjacent property owners.

NO. Variance request concerning the proposed addition to the single family dwelling and garage: There are alternative design options available to the applicant. The applicant could construct the proposed addition on the front or rear of the house and still meet all required setbacks. Also, the applicant constructed a large addition on the north side of the house in 1991 which resulted in an expanded living area for the property owner and his family. Taking this information into account, the approval of the variance is not the minimum variance that will allow a reasonable use of the parcel of land.

6. GRANT OF THE VARIANCE WILL BE INCONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. Variance request concerning existing garage and existing addition to SFD:

The intent of the Code concerning setbacks is to ensure there is adequate separation from adjacent uses to buffer the residents from the impacts generated by those uses such as noise, light, and dust (smoke). In this case, the adjacent dwelling unit to the north is setback 33 feet from the common side property line which is more than 4 times the minimum required setback of 7.5 feet. The 33 foot setback from the common property line will act as a buffer from any impacts generated by the existing garage and addition, thus, meeting the intent of the code requirement for side interior setbacks for residential uses. In addition, the request is compatible with the surrounding residential area since garages and residential additions are typical structures for residential lots.

NO. Variance request concerning the proposed addition to the single family dwelling and garage:

Considering the property owner is requesting a variance to allow a proposed addition which will encroach 2.8 feet into the north side property line, grant of the variance will not be consistent with the purposes, goals, objectives and policies of the Comprehensive Plan and this Code. The intent of the Code concerning residential setbacks is to ensure the neighboring lots are buffered from noise, light, and dust generated by the residential uses. In this case, the property owner could construct the proposed addition on the front or rear of the lot and still meet all required setbacks. Therefore, the requested variance will not be consistent with the intent of the Code.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. Variance request concerning existing garage and existing addition to SFD:

Grant of the variance will not be injurious to the surrounding area. As previously mentioned in the above criteria, the existing garage was constructed in its current configuration and location since 1980 and the existing addition to the single family dwelling has been at its current location and configuration since 1991. There have been no complaints from adjacent property owners concerning either structure. In addition, the adjacent property owner to the north has planted thick vegetation along the common side property line which buffers the subject structures from the adjacent single family dwelling to the north.

YES. Variance request concerning the proposed addition to the single family dwelling and garage: The grant of the variance will be injurious to the area involved or otherwise detrimental to the public welfare. The intent of the Code concerning setbacks is to ensure there is adequate separation from adjacent uses to buffer the residents from the impacts generated by those uses such as noise, light, and dust (smoke). In this case, the applicant is proposing to construct a 480 s.f. addition onto the main residence with a 2.8 foot north side interior setback. In 1991, the applicant constructed an addition onto the residence and the subject dwelling is now 2,609 square feet in floor area. Since the proposed addition could be constructed

elsewhere on the property and still be consistent with the required setbacks, grant of the variance will be injurious to the are involved or otherwise detrimental to the public welfare.

ENGINEERING COMMENTS

No comments(Eng)

ZONING CONDITION(S)

1. The property owner shall provide the Building Division with a copy of the Board of Adjustment Result Letter and a copy of the Site Plan, presented to the Board, simultaneously with the building permit application. (BLDG PERMIT: BLDG)

2. By September 21, 1999, shall obtain a building permit for the 480 sq. ft. proposed addition as shown on BA98-93, Exhibit 25 (DATE: MONITORING- Bldg)

3. There shall be no openings on the north side of the proposed addition. (ZONING-BA-BLD PERMIT)

4. Prior to the issuance of the Certificate of Occupancy for the proposed room addition, the Zoning BA staff shall conduct a site visit to ensure the existing vegetation between the subject property and adjacent property to the north. adequately buffers the proposed addition from the adjacent property to the North. If staff determines that the existing vegetation does not adequately buffer the proposed addition, staff shall require additional shrubs and trees to be planted along the north property line to ensure the proposed addition is buffered from the adjacent house to the north.

CHAIRMAN KONYK: Okay. I'm going to call the meeting to order. Board of Adjustment 9800087 is the next item on the agenda, Boca Raton Synagogue.

MR. MACGILLIS: Bofa 98-87, Boca Raton Synagogue to allow an existing free standing sign to exceed the maximum permitted sign face and height. The location is 7900 Montoya Circle, approximately .7 miles east of the Florida Turnpike and .26 miles South of Palmetto Park Road and .35 miles West of Powerline Road within the Boca Del Mar Subdivision, in the AR Zoning District Petition 84-152E. Found on page 27 of your backup material.

Staff once again has provided you with the minutes. There was discussion of several neighbors that were in opposition to that one being Mr. Find and he has submitted a letter to us for the record stating:

Please be advised that I withdraw my objections to granting of the above petition to allow Boca Raton Synagogue to obtain their existing sign that's presently constructed. The applicant has also -- Kevin Rathery has submitted a letter to us and I believe to each one of the commissioner's of signatures of surrounding property owners stating that:

As an adjacent homeowner I wish to express my support of the Boca Raton Synagogue request to leave the existing sign in it's present configuration. Although I understand that the synagogue was entitled to construct three signs of smaller size and height I believe that the one sign as it exists is a much more aesthetically pleasing solution to the code enforcement policy.

Just for the Board's information this was postponed last month. Once again we only had four Board members and so the applicant requested a postponement for --

MR. RUBIN: It was continued -- we heard it it was just continued.

MR. MACGILLIS: Actually I don't think this one was continued. I believe the only one that we continued was the --

MS. BEEBE: There was testimony that you were provided with and was taken at the last hearing so.

CHAIRMAN KONYK: Well, they decided to ask for a postponement towards the end of the hearing. So we were proceeding as though it was going through the hearing and then at the end they asked to

postpone.

MR. MACGILLIS: I think the only one we continued actually on the record was the Litwin petition. The one that was before this one.

CHAIRMAN KONYK: We didn't even continue that one. We didn't even hear that one, we just let the people do the testimony.

MR. MACGILLIS: Actually, the county attorney and I said why don't we continue this one because of the testimony that was already taken. Usually when you postpone it you have to hear everything all over again.

CHAIRMAN KONYK: Oh, I see what you're saying. But we never heard that one the Litwin's.

MR. MACGILLIS: We heard testimony from the neighbors.

CHAIRMAN KONYK: Right that was all we ever heard. We never heard from the applicant on that one.

MR. MACGILLIS: Right.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: The motion was for postponement not for a continuance.

CHAIRMAN KONYK: Okay.

MR. RUBIN: So are you saying we're hearing it again.

CHAIRMAN KONYK: Maybe we can hear it briefly.

RABI BRANDER: Let me just summarize it and then we'll appropriately deal with the problem. Let me just remind Madam Chair person and the Board that the synagogue is allowed three signs. Each sign according to code can be eight --

CHAIRMAN KONYK: Rabi I don't mean to interrupt you but could you spell your name?

RABI BRANDER: Rabi Kenneth Brander, B-R-A-N-D-E-R.

CHAIRMAN KONYK: Thank you sorry.

RABI BRANDER: Anyway's the synagogue is allowed three signs each sign is allowed to be a certain amount of feet and height with the total sign face area being 288 square feet on three signs 96 square feet per sign. What exists now is one sign which is eight feet, eight inches with a sign face area of a 170.8 square feet and instead of the 288 square feet allowed to us.

What we would like to do is waive all our rights to any additional signs. The two additional that are permitted on that property to keep the

aesthetically pleasing one sign that we have so be it that it is eight inches above code and therefore we'll have less square footage of signage in front of our synagogue. There are 44 signatures of people that live within a few hundred feet who have requested that. We have additional people who have come, some with a -- one with a little child to support this motion.

And the person that petitioned this and the reason we are here to begin with Mr. Find after meeting with him and Mr. Rich have both agreed that it would be better -- that the community would be better served if we just have this one sign. And he has sent a letter to staff indicating that he would prefer this one sign which is eight inches higher and we will give up the ability to have two more signs.

Let me just conclude my statement with the entire purpose of variances or not giving variances is to deal with the adverse impact on the surrounding environment. I'm here following code and causing us to chop this sign into two and making it three signs instead of one will create an adverse impact on the surrounding environment. Not only will it be a financial outlay for the synagogue but the neighborhood has greatly requested that we maintain the aesthetically pleasing sign. Give up the right to two other signs which is what a variance should be to guarantee that the surrounding environment is not impacted upon which is what we will achieve I think by getting this variance.

CHAIRMAN KONYK: Thank you, staff presentation.

MR. MACGILLIS: Just for the record Mr. Moore did point out in the minutes on page 54 that it was actually continued. So unless you want me to comment, unless somebody wants me to go over the staff report briefly.

CHAIRMAN KONYK: No, I really don't. Does anybody here feel they need to hear everything all over again.

MR. COHEN: No.

CHAIRMAN KONYK: Any objection from the public? Anybody here to object?
(NO RESPONSE)

CHAIRMAN KONYK: And you have people hear to speak in favor which we can --

RABI BRANDER: If your interested.

CHAIRMAN KONYK: It's okay right?

AUDIENCE MEMBERS: Yes.

CHAIRMAN KONYK: That's fine with me.

RABI BRANDER: If you want to hear a 15 minute speech from each one of them.

CHAIRMAN KONYK: We would limit them to two minutes each. I guess we're ready for a motion. Is someone ready to make a motion?

MR. BASEHART: Well, nobody else is I'd like to make a motion that we approve variance BOFA 98-87 for two variances the 74.8 square foot variance on the face area of the sign and also an eight inch variance on the height. My motion is based on the fact that I think that the proposed sign or the existing sign is consistent with the intent of the code. In giving the allowances of the code the granting of this variance will actually reduce the total square footage the sign is eligible -- that the property is eligible for and the height variance I think is minimal eight inches.

Based on that and I would like to include a condition in my motion for approval that no additional free standing signs be permitted on the property. As long as this sign exists.

MR. COHEN: Second.

CHAIRMAN KONYK: We have a motion and a second by Mr. Cohen. In light of this is there any conditions that staff would like to add.

MR. MACGILLIS: Yes, actually we have five conditions.

CHAIRMAN KONYK: Okay, can you read those.

MR. MACGILLIS: Number one, by April 21, 1999 the applicant shall apply for a building permit of the existing sign.

Number two, by July 21, 1999 the applicant shall obtain a building permit for the existing sign.

Number three, the applicant shall not be permitted to construct any further point of purchase identification signs along Montoya Circle.

Number four, by February 21, 1999 the applicant shall ensure that BOFA conditions are placed on the certified site plan for parcel 15 exhibit 30 found in the zoning reference.

RABI BRANDER: What's that?

MR. MACGILLIS: By February 21, 1999 the applicant shall ensure that BOFA conditions that are approved here today are placed on the certified site plan for parcel number 15.

RABI BRANDER: In other words we will only

have one sign and not three and all of those other things that you just mentioned.

MR. MACGILLIS: Right, and I still have another one.

Number five, is the existing signage lettering shall not be modified or replaced or enlarged in the future.

CHAIRMAN KONYK: Okay, you said no more signs on Montoya Circle isn't it just no more signs on the site period.

MR. MACGILLIS: No, because we don't have a problem if they want to put one on the building. We're more concerned --

CHAIRMAN KONYK: Oh, okay.

MR. BASEHART: My ulterior motion was that no additional free standing signs which -- and the only frontage that the property is Montoya Circle anyway.

CHAIRMAN KONYK: Okay.

MR. BASEHART: I would like to amend my motion to include all of the staff recommendations.

CHAIRMAN KONYK: Okay, does the applicant understand the conditions?

MR. RATHERY: I just want to clarify one thing, Jon. When you talked about the existing lettering shall not be replaced or enlarged. Obviously, if a letter falls off and breaks it needs to be replaced.

CHAIRMAN KONYK: Altered.

MR. MACGILLIS: Altered or enlarged.

MR. RATHERY: Okay, thank you.

CHAIRMAN KONYK: Okay, so as modified do you understand and agree with the five conditions?

RABI BRANDER: Yes.

CHAIRMAN KONYK: Any discussion from the Board.

(NO RESPONSE)

MR. MOORE: Do we have a second?

CHAIRMAN KONYK: We have a second Mr. Cohen seconded it.

MR. MOORE: Okay.

CHAIRMAN KONYK: Okay, all those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Opposed?

MR. RUBIN: Opposed based on my comments from the last meeting.

CHAIRMAN KONYK: Mr. Moore were you in favor?

MR. MOORE: Yes.

CHAIRMAN KONYK: Okay, the motion carries six to one.

CHAIRMAN KONYK: Jon, just out of curiosity how will you prevent other signs from going up. Will this variance pop up if they went to apply for another sign? Who will monitor that?

MS. BEEBE: It will be enforced by code.

MR. RUBIN: The Rabi.

CHAIRMAN KONYK: Kevin before you leave, this has nothing to do with our Board but Kevin is leaving Kilday and Associates. He's taking a position with G.L. Homes, so I imagine this will be the last hearing that you're at. So I just wanted to thank you for your professionalism and the way that you've handled your business with this Board and I do appreciate it. I'm sure the other members of the Board do as well.

STAFF RECOMMENDATIONS

DENIAL, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC), which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

NO. This 4.6 acre Tract 15 within the Boca del Mar PUD was Master Planned in the 1970's. The site supports the Boca Raton Synagogue which was constructed in 1987, consistent with the approved Site Plan, Exhibit 30. Parcel 15 was designated on the Master Plan as a civic parcel, the synagogue (place or worship), is a permitted use in a civic parcel. The approved Site Plans has always shown the sign location where it is presently located. However, when the bottom portion of the existing sign was installed it was done so without a valid permit. The applicant states, it was their understanding after speaking to the developer of the site that the sign was permitted under the primary

permit for the main structure. However, staffs research of the building permit shows no reference to the sign. Furthermore, sign permits have always required a separate permit from the main building. The sign was further expanded in the past several years by the placement of the 21' by 3'.6" top portion that identifies the "Boca Raton Synagogue". The applicant states they did modifications to the surface (added marble) and letter in later 1997. It was this last modifications to the sign that resulted in a concerned resident who resides in the community to file a complaint with Code Enforcement. The resident was concerned that the sign was being further enlarged without property permits. The Code Enforcement Officer cited the applicant for violation of the sign code and failure to obtain proper permits. The sign could have been placed on this site to meet the sign code regulations in effect at the time. The failure of the contractor and applicant to obtain permits for the original sign and subsequent modifications has resulted in the violations and need for the requested variances.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

YES. As stated in number 1 above, the applicant states they were informed by the developer that the original sign was permitted under the primary permit for the synagogue. Staff has researched the building permit (B86023816) and found no reference to a sign. The County has always required separate permits for signs. The applicant further states that the modifications to the signs over the past years were done so with the understanding the original sign (base) was legal and the modifications would be within code. However, failure of the contractor to first consult the code to review sign regulation and not obtain permits has resulted in a sign with a face area that is twice what is permitted by code. The sign height is also exceeding code, however, only by a minimal 8'~.

The Zoning Staff has informed the applicant that the top portion of the sign could be removed and relocated along the frontage and meet code without the need for a variance. The applicant informed staff that the most recent improvement to the sign in late 1997 which included resurfacing the sign

with marble and installing new letter was very costly. Staff further suggested the applicant provide staff with the cost estimates as to how much it would cost and whether or not it was feasible to remove the top portion of the sign. Staff has not received any documentation from the applicant to satisfy this request.

Therefore, the requested variances are self created and can be corrected without the need for the two requested variances.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT: YES. The sign code allows signage based on several criteria: right-of-way width, adjacent zoning districts (to determine sign height and face size), and length of frontage (to determine how many signs can be installed along the properties frontage). This particular property could have a total of three signs, each with a maximum sign face of 96 square feet (total of 288 square feet of signage) and maximum of 8 feet in height. The granting of a variance in this predominantly residential district to an applicant who failed to obtain permits would be a special privilege.

If the variance is not granted the applicant could modify the existing sign to remove the top portion (78.12 square feet) which currently displays the name of the use, "Boca Raton Synagogue" and move it else where along the frontage. The applicant would not loose any sign identification area and could utilize the existing sign.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

NO. As stated in number 3 above, the existing sign can be modified to comply with current code sign code requirements. The site is permitted a total of 3 signs along the property frontage. The

top 78.12 square feet of the sign can be removed from the bottom portion and moved to a new location along the frontage. The applicant would then meet code and not have been granted a special privilege to keep a sign that does not meet code and was installed without a valid permit.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

NO. The property is entitled to 3 point of purchase signs (free standing), each with a sign face of 96 square feet. Had the applicant or contractor consulted with Zoning staff prior to installing the sign the requirements could have been explained and a solution presented that allowed the same existing square footage of signage face. However, it would be in two different signs. Also, a creative sign contractor could have designed the current sign smaller and still placed the same information on one sign.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

NO. The intent of the sign code is to ensure business are provide adequate identification for their business or service while at the same time encouraging creativity, effectiveness, and flexibility in the design to protect the aesthetic appearance of the community. As previously stated, this particular parcel of land is permitted a total of 3 signs with no sign face to exceed 96 square feet. The code allows the property owner flexibility in installing signage for separate uses on site, should they choose. For example, one sign could identify the synagogue another a day school or day care. However, the developer and applicant have chosen to install only one sign at this time to identify the name of the use, "Boca Raton Synagogue" and the name of the campus, "The Hahn Judaic Campus". The sign face is almost twice what is permitted by code. The ULDC does not have a provision that allows the applicant or property owner to place a larger sign on site if they agree to eliminate other signs that could be permitted. If there was such a provision this sign could be permitted without need for variances.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

YES. The intent of the sign code is to establish a balance between identification of a business or service while addressing the visual impact it will have on the surrounding neighborhood. This sign is located on a civic parcel within the Boca del Mar PUD. Several residents have contacted staff and are concern with the size of the sign. They have, however, stated that as long as the sign is not expanded and no other signs are installed they have no concern with the variance being granted. As previously stated, the applicant is permitted three signs along the frontage of this site. The current sign could be reduced to meet code and have less an impact from the street in terms of the size of the sign.

ENGINEERING COMMENT(S)

No Comment (ENG)

ZONING CONDITION(S)

1. By July 21,1999 the applicant shall obtain a building permit for the existing sign.(DATE:MONITORING.Bldg Permit)

2. By April 17,1999 the applicant shall apply for a building permit for the existing sign. (DATE MONITORING-Bldg Permit)

3. The applicant shall not be permitted to construct any further point of purchase or identification signs along Montoya Circle (ONGOING-CODE ENFORCEMENT)

4. By February 21, 1999, the applicant shall ensure the BA conditions are placed on the certified site plan for Parcel 15, Exhibit 30. (DATE: MONITORING-ZONING-DRC)

5. The existing signage shall not be altered by replacing or enlarging it in the future. (ONGOING-CODE ENFORCEMENT)

MR. MACGILLIS: The next item is item five on the regular agenda. Bofa 98-100, Petition of Randell Enterprises of Palm Beach, Inc. also known as Williams Soils and Sod to allow for five variances.

CHAIRMAN KONYK: We have several members just so you know Mr. Koehler that have to leave at noon.

MR. MACGILLIS: To allow an existing outdoor storage area to encroach into the side corner, rear and side interior setback and to allow a reduction into the required -- I'm sorry I'm reading the legal add the way it was sent out to the post but it's been modified. So they're asking -- they're not asking for landscape variance. They're asking for three setback variances on the existing storage area. So there will be a north, east, and south setback encroachments for the existing storage area. The landscape variances have been eliminated.

The property is located 2580 South Military Trail at the southeast intersection of Military Trail And Vicliff Road known as Williams Soils and Sod in the CG zoning district. Found on page 60 of your backup material. This is item once again was postponed at the December hearing. The applicant requested the postponement because there was only four Board members. The minutes are provided to you once again on -- I don't believe there really was any testimony taken on this case.

CHAIRMAN KONYK: Okay, before you proceed lets get everybody sworn in. Anybody that's going to speak on this item if you would stand, raise your right hand and the court reporter will swear you in. (WHEREUPON THE SPEAKERS WERE SWORN IN)

MR. KOEHLER: Thank you Madam Chair that was my first item of business. My name is Dennis Koehler, I am the attorney for the applicant, the petitioner in this case. Real quickly my clients are the Randells, Ms. Randell, Ms. Georgina Randell and Mr. Nick Randell, they are the owners of Randell

Soils and Sod which is on South Military Trail across from the Cresthaven shopping center for those of you who know that area of the county.

I'd like to also introduce David Kerr our project site planner landscape architect. David has some revised site plans that were developed in a consultation with Mr. MacGillis and I believe signed off on just yesterday. This would be a revised exhibit 27, we're going to be referring to it it's a site plan. So David at this time if you would give copies of that site plan to each of the members.

CHAIRMAN KONYK: Can I ask a question is there anybody here to speak against this item?

AUDIENCE MEMBERS: Yes, we are.

CHAIRMAN KONYK: Okay, thank you. Continue.

MR. KOEHLER: So David is going to be passing out what I said is going to be the new site plan exhibit number 27. Board members you know that on December 17, when you last met we asked for a postponement I had prepared a detailed handout which I subsequently mailed to each of you. I don't believe it got into Mr. Cohen's hands, but I do have extra copies of the text of that variance justification statement and debate or discussion on a couple of proposed conditions. That was mailed to you on the 14th of this month.

I would ask that that memorandum be made part of the official public hearing record for that effect.

MR. MISROCH: So moved.

MR. RUBIN: Second.

CHAIRMAN KONYK: Motion by Mr. Misroch second by Mr. Rubin. All those in favor?
(ALL RESPOND AYE)

CHAIRMAN KONYK: Carries unanimously.

MR. KOEHLER: Thank you Madam Chair. Real briefly based on my experience as a military briefing officer, I want to tell you how we're going to approach this we're going to be very brief. We're going to start with the conclusions. That is that the variance should be approved as recommended by staff and we have some revised conditions that I would like to now pass out to each of you starting with the attorney and then to each, I think we've got all seven members of the Board right here.

MR. BASEHART: Are these conditions acceptable to the staff?

MR. KOEHLER: Staff has not yet looked at them. Four of them are corrections of the dates to reflect the 30 month delay. Actually the dates are differing in the staff report, we'll take the staff dates. That will be conditions --

CHAIRMAN KONYK: A 30 month delay or a 30 day delay which was it?

MR. KOEHLER: It was a one month delay. And whatever -- so proposed additions one, two, three and five deal only with the dates. The other conditions four and six are the ones that we've been negotiating with staff. The site plan that Mr. Kerr worked on with Mr. MacGillis as recently as yesterday -- we are offering revisions to condition number four that would reflect those negotiations.

Again, we are making reference to exhibit 27 which we have just handed out to you. Condition number six is one that we may wind up having to debate with the zoning division. They will insist that we go through a development review committee site plan review. Our position which we will be articulating to in a few moments is that with all of the details that are shown on this plan, all of the negotiations that have lead to this plan, there is no need to go through an extra expense, cost and time going for DRC site plan approval.

Although Mr. Whiteford is not here at the moment as of late yesterday he still had not agreed to change that condition number six. We have proposed provisions to that language that clearly make it required that all permits acquired to implement this development plan, if you approve it today, have to be consistent with this plan that has been presented to you. And Mr. MacGillis of course wants an opportunity if there are any changes to this plan to review it to make sure that your intent is consistent with those changes.

So that's the main change we've made in number six. And number seven I just suggest to you that the added language for the effected area which is where the storage and the travel takes place, the vehicular use area, that's the effected area. This building and this existing parking lot were never part of any of the discussions that brought us here today. Mr. Kerr will describe briefly for you the site plan and tell you briefly again how we got to that point. Mr. Larry Rowe is the contractor who is involved -- if you read the materials you know that this thing was built and permitted back in early

1997.

We are prepared to ask and answer nine questions that will place into the record the facts that are the basis for this whole variance request. If you want me to go through that I will be glad to do that. Again as you know staff has recommended approval and we would like to defer making a full presentation since we know number one, it's already in the record all of our arguments and second, staff has recommended approval subject to the conditions. We do however, want to be able to respond to any further criticism's that the neighbors may offer and I know that's a tradition that you generally uphold.

And that's really my introduction so without any delay I'd like now to ask Mr. Kerr to step up and use the existing color board to describe what we have done to respond to every concern that the zoning division has raised throughout this incredible process which as you know involves the code enforcement board just a few months ago. And David if you might state your credentials and address on the record please.

MR. KERR: Good afternoon, David Kerr, planner and landscape architect with Seminole Bay Land Company. When I was first brought into the project there was a code enforcement issue there was essentially three main items that needed to be addressed. Number one, was the lack of landscape buffers. Number two, was a place with a storage area immediately adjacent to an existing residence in violation of setbacks for storage areas. And the last item had to do with the non-paved surface of the vehicular use area.

To date we have addressed all of these items and then some. As we went to zoning to work out the three code enforcement issues, one of which has brought us here today, a variance for a setback. A lot of other conditions came up to try to make this project consistent with the unified land development code. I believe we have addressed everyone of those and we have developed a plan that is extremely and tremendously consistent with the ULDC. Very quickly to review we've put in right-of-way buffers in the appropriate width along both streets being 15 feet in width on both streets, ten foot compatible or incompatible depending on how you want to call it and ten foot buffers against residential areas. Five foot buffers when commercial abuts commercial.

Interesting enough to point out for those of

you who may not be aware of it this is an existing residence but it does have general commercial zoning. So the inconsistency has to do with what's being used there now. It's not a zoning inconsistency per say. Mr. Koehler will address the storage areas. As many of you are probably aware of things such as sod, things that are alive can be held in there where in -- I don't want to say violation, but they can be closer they can be within buffers. Mulch unfortunately I guess is dead, It used to be alive so that's kind of why we are here today.

The other issue's that came up in zoning were visibility from the neighbors. This is one of those operations, if it's going to be intercity the neighbors probably aren't going to like it. It is mulch, it's dust, it's noise, it's -- that's just the very nature of this operation. So what we've done is come up with the buffer's all the way around. Most importantly on the side that most effects the residential neighbor's we are proposing that the existing bins be left in place. They have a six foot wall in the back and what we'll do is essentially create the last ten feet of it as a raised planter. We'll fill in the back of that bin, put soil in there, plant tree's and shrubs.

What we've created for you here is a total realistic presentation of what the neighbors will look at. They will look at a six foot in height masonry wall, planted behind that and actually adding to the height of that will be a fichus hedge. It will be installed at six foot of height at installation.

MR. BASEHART: Are you going to build the condo to.

MR. KERR: Yes. Anyway, so you see we're giving them a wall here that will be started at three feet above ground and you'll have three feet of wall and then we're going to have another six feet of shrubs. So you've got anywhere from nine to twelve feet of wall up against there, and working with zoning staff we were very careful that we planted something in here that wasn't just a row of lollypop's with spaces in between. We built them a vegetative wall that we know can deal with dust, noise, etcetera. And then we staggered in the sable palms to increase the height of the wall even more.

So we've kept a lot of things in mind. Number one, we don't want any tree shrubs or things

that we put in to become maintenance problems for the neighborhood as far as overhanging shade and this, that, and the other. But most importantly we put in a buffer that can continue to go up in height and screen this operation.

The most critical item here, of course, has been this entrance. Right now there is an entrance in this gate of approximately 40 feet, it's 38.6 feet. And right now it's handled with a rolling gate. What we wanted to accommodate for the county is this stacking distance that you typically put outside of the gates so that vehicles can get off of the roadway, hopefully as far out of the right-of-way in case they are trying to access the business and the gate is closed. Staff typically was looking for something in the 20 to 25 foot range by coming in with an inverted "V" entrance we were able to put in 27 feet of stacking and almost enough width to put two cars in there side by side.

So we've really exceeded what zoning was looking for in this area as well. And I think that's the approach we've taken all along. Zoning has come in and said hey we want some of this kind of hedging and we said hey we'll give you fichus and this, you know, we've tried to do a little bit better in every case.

The last item to address is the paving which was one of the code enforcement issues. We've had this plan run by engineering preliminary meeting with them. We've gotten a verbal thumbs up on it that they have no problems of the proposed outline of the paved areas. They will work with our engineering which is Wallis Engineering to agree on what type of servicing curving etcetera. All of that will be reviewed by Palm Beach County engineering to be in compliance with the ULDC.

So once again we feel that we've nailed down all of the site plan issues. At this point to go to DRC is redundant, it's costly for the client and most importantly the project doesn't meet the threshold to go to DRC. So we feel that it is a very heavy and unnecessary condition and one that the client normally would not have imposed upon him. Unfortunately, because he came in through code enforcement and zoning variances they're trying to put this requirement on him and we're very much against it. I think that covers my presentation. If you have any questions.

CHAIRMAN KONYK: Yeah, I have a question.

This hedge that's going to be buffering the two properties what will be the height of the hedge?

MR. KERR: It's going to be installed at six feet. Now, keep in mind you have a six foot wall, the planter starts at three feet so essentially right off the bat you're looking at nine feet of screening.

CHAIRMAN KONYK: Okay, is there some code required that says how high a hedge can be between two pieces of property, what's the height?

MR. MACGILLIS: Eight feet in residential and side and rear property lines but commercial there's none.

MR. KERR: Again, we want to stay totally code compliant, but when you have dump trucks and things like mulch you might want us to be a little bit above.

CHAIRMAN KONYK: I just knew that in the code somewhere there was some reference as to how high a hedge could be and I would not want you to -- but it's not applicable here because this is commercial that's in residential. I don't know the code that well I just know little parts of it.

MR. KOEHLER: Any other questions of Mr. Kerr, Board members?

(NO RESPONSE)

MR. KOEHLER: Okay, Board I'm prepared to have Mr. Rowe testify as to the original permitting facts if you want me to do that for some questions. If not I'd be delighted to sit back and listen to -- it's all in the record already. I'd like to here our neighbors and then maybe we'll put closure on this.

CHAIRMAN KONYK: Let's just move toward closure then.

MR. KOEHLER: That complete's the presentation of our side.

CHAIRMAN KONYK: Now, we'll have the staff presentation.

MR. MACGILLIS: We entered this into the record last time but the applications been admitted obviously since he came in. They've been working very closely with staff this is once again a very difficult petition. Permits were issued for both the fence and the storage area incorrectly by the building division staff. Now, coming in -- the use is permitted here. It's a permitted retail use that's been determined by the zoning director Marty Hodgkins and by other zoning staff. So that's not an issue here today. What we're looking at is that

the storage area shouldn't have been put where it is. It's there and it's obviously impacting the neighbors to the -- immediately to the east and in the neighborhood. I think the opposition you're going to hear --

MR. BASEHART: This is not a situation where we're dealing with somebody who just put in something. It was permitted.

MR. MACGILLIS: Right, it was incorrectly permitted. The use existed on Military Trail for many years. What the applicant did is he purchased the lot that's supporting the majority of the business now which is that storage area and the maneuvering area. It used to support a single family home. He purchased that about two years ago, bulldozed down the house and expanded his business there because he lost the lease on the parcel immediately to the south along Military Trail that he used to use. He lost the lease so he had to -- in order to keep the business going he purchased this property here. Expanded the business back there came in -- I don't know if this is the contractor who applied for the permit but the permit was reviewed by the building division. I think what the confusion came about was because they didn't look at this as being a structure. They looked at it as being a wall because all you have are these, you refer to them as, wing walls coming out that are holding different materials in them. Everything from top soil to shell rock, and so I don't think the building staff realized -- there's another provision further in the code that says no storage area shall be in any of the required setbacks.

So, the permit got issued, the structure was all built and then the complaints started coming in because of all the noise and stuff. Staff went out, code enforcement cited them for this and other code violations, and there are no paving and stuff on that. So he is in violation with code enforcement, code enforcement is giving him time to come here to get the variance and clean up the site. He has been working with staff, we've been in communication with the neighbors, I know they still have opposition here today, we've tried to weigh how to resolve this issue taking into account permits have been issued, the use is permitted there, we do have a structure in the setback, how to best balance this out. I don't think it's going to be no-one -- it's not a win situation here really for anyone.

So staff is recommending approval based on the storage area with the fact that we feel the litigation with the landscaping the intense buffering that's been put in there and the different layering as David Kerr has just indicating that we provide additional buffering there. The other thing we wanted to stress, that storage area, if it was moved in to meet the setbacks of 20 feet especially on that side that's adjoining the property. They would only be requiring the six foot wall trees 30 feet on center and I've explained this to the neighbors, I said that because they're coming in here to get a variance the Board has the ability to put these imposed conditions on here to hopefully offset the impacts associated with the overall use in addition to the variance situation we have here.

So the other issue that we are still -- we were still working on until yesterday, the applicants have indicated was the access coming into the property. Because one of the neighbors who is here is going to have comments on that that her property is across the street and the trucks when they are coming in are backing up and somehow maneuvering into her driveway because it's lined up right across the street. Staff was very concerned with that. If we did pull the permit it was issued -- I think the confusion on the permit that was issued for the fence it was a sliding fence that went across. It was never -- staff didn't require any kind of stacking area coming into the property so what we have now is vehicles stopping on the street or pulling in. It's a very wide gate they leave part of it open and vehicles tend to maneuver in but for some reason they are backing up at some point and backing up into her driveway and stuff.

So hopefully the solution that David's come up -- David Kerr has come up with here is going to help the county from our perspective, meaning what we feel is a safer situation. Hopefully it's still going to screen the surface areas from the residents in that area and it's still going to screen hopefully the storage area because we tried to pull the landscaping in and narrow the area down some. So now you're going to have trucks pulling off of the road at least coming into the site and parking out onto the street and waiting if there's another truck in the entrance.

So the only other issue staff, I mean I spoke to Bill Whiteford once again this morning

about the condition with requiring the applicant to go to DRC. The reason we were requiring that even though it's not a requirement this is a permitted use and it does not require to go to DRC they can go right to the building permit. We were concerned with the layout and the outstanding code enforcement violations and the fact that this is the first time I've seen the retention areas drawn on the site in the paving layout.

We were very concerned because there were still other issues regarding the site code requirements that weren't addressed up until -- I mean this is the first time I've seen this plan. That we were concerned that if we approve this plan the effected area here, that's coming in here today, if he comes back and has to do modifications to this we don't -- we were going to put a condition on this that he couldn't modify this exhibit. Because of the neighbor opposition we wanted to keep them tight to this plan. We don't want them coming back in six months later going to get a building permit and modifying this layout. See we were going to stick them to this exhibit but then realizing he doesn't have everything laid out on this site, that he still has to fine tune things. He would end up having to come back to you and say look BOFA staff is bringing me back here because they feel I'm moving something on this site that is really going to effect the neighbors and it's effecting the intent of the approval of the variance.

At least if they went to the DRC meeting they have the authority to move things around and the BOFA staff can look at it and see the intent of what you approved would be met. So that is the reason why --

CHAIRMAN KONYK: Okay, now that you've seen this drawing you still feel that way?

MR. MACGILLIS: Once again, Bill Whiteford had concerns with other agencies because once again this exhibit only went out to engineering to look at. So he's claiming that, Mr. Koehler, when he comes in through the permitting stage that the other agencies will have an opportunity to look at it which is correct.

MR. BASEHART: Can I comment, first of all and this is a legal question. I thought the code required that when an applicant comes to the Board of Adjustment for a variance that the site plan that was presented to the Board to support the variance

request is a binding site plan. That you have to comply with the site plan approved by the Board of Adjustment?

MR. MACGILLIS: Typically, that's what we do but unfortunately because of the way our process works that always doesn't get followed through in the building permit process. Because they are a lot of times not aware that there was a variance approved on the site, the applicant doesn't bring in the permit. And whatever they're bringing in for that particular permit meets code and then all of a sudden it gets through the system and somebody says well I don't know where that retention area got moved because of the controlling BOFA plan. But if you go through DRC they get copies of all of the mylars downstairs and building division is aware they have a controlling site plan that everybody -- the agencies have reviewed it.

So as our extra level to ensure that all of the loose ends are tied up that will benefit not only the county, the neighbors, but the applicant because they're still -- the neighbors or the applicant still has concerns in his property owners that when he goes through DRC staff is going to start nitpicking everything else and they're going to have another laundry list of stuff that they're going to want him to do.

MR. BASEHART: Speaking from lots of experience I agree with them.

MR. MACGILLIS: We can only enforce the code. So when it comes to DRC hopefully that's what it's going to be limited to. If there's still going to be permitting problems we don't want them back in here in front of the Board of Adjustment.

MR. BASEHART: I agree that it would be good to have this go through the DRC for the purpose of establishing an approved site plan and a mylar so that you have a safeguard to assure that if this variance gets approved then the plan doesn't change. Typically, I do a lot of zoning petitions and I'll go through a zoning petition through a public hearing process. Through the site plan review people in the department that make me change the plan certain ways, because that's the way they would like to have them and not necessarily typically strict code type of thing.

And then I'll go through the public hearing process I'll get my approval and then I submit for DRC site plan approval and then the other group of

site planners wants to change back to the way I originally had it or some other way and you run into a problem. When you go through the DRC there's like 20 agencies you're looking at and a lot of things they do to you aren't strict code issues. Is there a way we can require to go through DRC with an instruction from the Board of Adjustment that unless a change to the plan is necessary to comply with a code requirement that it should be this plan. Could we do that?

MR. MACGILLIS: That's the intent of the staff.

MR. BASEHART: Would something like that be acceptable?

MR. KOEHLER: If I might respond to the discussion here. The proposed revisions that we've offered to condition number six, ensures that Jon MacGillis Board of Adjustment staff reviews any final permit applications and drawings to make sure that this site plan is what that construction permit reflects. So at least as far as the Board of Adjustment and your Board of Adjustment staff is concerned the language we've offered covers all of those bases.

Our concern, Mr. Basehart expressed as certainly as well as I could, we're worried about what happens if we go through the whole DRC process and someone says hey there should be a pedestrian path along Vicliff Road, we think that's a good idea. Oh and by the way the Military Trail median cut there ought to be some landscaping and irrigation out there, we want you to do that. That's what we're worried about. And I know that Bob understands full well what I'm talking about. I think the issue is does the Board's approval today hopefully of this variance subject to all of the details shown on that site plan get implemented when our client goes into construct those improvements.

I think this revised condition number six addresses all of those concerns adequately. That's our position on that.

CHAIRMAN KONYK: Okay, at this point I'll open the public portion of the hearing and hear from the -- do you have a question?

MR. RUBIN: I wanted to ask Jon, do you think you've had ample opportunity to review the conditions and the documents that have been submitted by the applicant to still state the staff is in favor of approving the conditions as modified.

MR. MACGILLIS: Well, I have some comments on the conditions. They're just minor changes in the dates and stuff and the site plan from zoning perspective I don't have a problem with. I don't know if there is any other agency that would want to look at this petition. From my perspective it appears to work.

CHAIRMAN KONYK: Let the record reflect that Mr. Cohen has left.

MS. NEWBURY: My name is Sandra Newbury, and I'm doing a run down of the whole neighborhood. I have some photo's here which may help to explain. After two years we the immediate neighbors of Williams Soils and Sod are outraged. We had the peace and quiet of our neighborhoods and homes invaded by the business. Due to errors on behalf of the county issuing permits for this business. And due to a contractor submitting incorrect plans. How can a mistake such as this have been made. We live with a mud pit next to our home an unfinished concrete block wall and storage bins 20 to 25 feet from Mr. and Mrs. Hodges living room. A 40 foot wide view of heavy equipment dirt and sod being delivered and dispatched from this dirt depot.

We have been trying to get this matter resolved for two years. We have lost countless days from work due to meeting with code enforcement, planning and zoning. Retail is not the correct word for this type of business. This does not appear to be a general landscaping retail business, it's a dirt business. There is a large volume of dirt and sod going into and out of the yards daily.

We have all lived in these homes for at least 19 years. When we built our homes we were under the understanding that we were zoned residential, not general commercial. And this does not address the fact that Mr. and Mrs. Hodges home in lot 48 -- to say that it is a currently occupied building does not tell you the whole story. They have lived there for 30 years with their ten children, their spouses, 21 grandchildren and nine great grandchildren come for Thanksgiving and Christmas dinners. The wall on those photo's is their view from their living room window. And that's what they look at when the trucks are unloading.

This is a particular hardship for Mrs. Hart, she suffered a stroke four years ago and as you can imagine the banging and the noise from the trucks

dumping dirt are particularly unbearable for her. We are astounded that the neighbors were not notified of such changes. One day we live next to a small house on a large lot with pine trees and wood fences and hedges and a decent view. We now feel that we live on Military Trail with the accompanying every increasing noise that goes with the business 24 hours a day.

There are no other business that we know of on Military Trail dealing with this magnitude of dirt and sod. There is plenty of service industries but none of this type. This whole situation seems totally underhanded and boshed. We don't understand why a final CO was granted when the things were on the property line. We don't feel that the ten feet on the east side of the building is enough of a setback. I don't know if you can imagine the noise that we get from the trucks dumping the soil that close to our homes, 20 feet is probably from where you are to about right here, an extra ten feet is really not going to --

MR. NEWBURY: It's the slamming of the tailgates you have to consider.

CHAIRMAN KONYK: We can only here from one person at a time. You'll have your turn.

MS. NEWBURY: When the plans were submitted we were to understand that it was a landscape operation. To us a landscape operation conjures up visions of someone selling plants and trees. There are no plants and tree's being sold from this business. It's just truck loads of dirt and gravel, mulch is the least of our problems at least that doesn't create dust.

The storage -- as far as the storage bins go it was not our error that created the bins, our properties have been devalued far more than the six thousand it cost Mr. Randell to install them. Our quality of living has been eroded. No longer can we come home from work and enjoy our peace and quiet. We have to tolerate noise dirt and fumes all day long. We feel as far as question three goes if there's room for special privileges upon the applicant to the detriment of the resident the business is much smaller when it was on Military Trail. It is no longer situated on Military Trail it is on Vicliff Road now.

When it was on Military Trail there was a large concrete block wall separating it from the lot they have taken over and that cut down on the noise

and also we do not believe that they were dealing in such volumes because it was a much smaller lot. That's basically my statement.

CHAIRMAN KONYK: Okay, thank you. Anybody else?

MR. NEWBURY: I'd like to say something if I may quickly?

MR. BASEHART: I think it's -- why you're coming up to the microphone it's important to point out that this Board is not a zoning board. We don't deal with comprehensive plan issues or rezoning. My understanding here is that the use that's on the property is a permitted use in this zoning district. So we're not talking about whether Williams Soil and Sod should be allowed to be there. The issue before us is effectively, well it's limited to the three issues that have been advertised. I guess the most relevant the one of the setback from the property line for those storage bins.

MS. BEEBE: That's correct.

MR. BASEHART: So we can't deny the use.

MR. NEWBURY: Absolutely, and seeing that you can't shut this business down which should have been done. Then we have to at minimal insist that all the rules and regulations that apply to every other business on Military Trail be adhered to. I'm talking about the 20 foot setbacks, particularly on the east side against the Hodges. You have to fully understand this business - the nature of this business. They deal in volumes of dirt, the more dirt and dirt related products that are brought into the property and the quicker it is taken off of the property the more money they make at our expense.

We're talking about health issues, we're talking about quality of life issues, we're talking about the depreciation of property value. Now, these variances cannot be granted our quality of life is depreciated significantly, major. Not a day goes by that we don't have to wrestle with this situation in our minds. If you can understand how this stuff is delivered. These things are storage bins for large volumes of dirt, now these are brought on dump trucks. They have reversing signals, you know that high pitch, beep, beep, beep, is going all the time. The air brakes release, and as they dump the load they pull forward and bang the tailgate, bang the tailgate and it's enough to make you jump out of your skin.

Now, if you can imagine being 20 feet away

from this in your living room and having this happen and then once the dirt is dumped in these bins, and then it has to be sold and distributed, it is picked up in bobcat equipment. Okay, this is heavy equipment, it has to be categorized the difference is it runs hydraulics the motors are running at three quarters speed or better to keep the pumps working properly so they're really, really loud, okay. And then they scoop up this dirt and they drop it into other trucks.

Now it goes without saying that when you do this this stuff is dispersed. We are restricted forever to never opening our windows again if a cold front comes through. If the rest of you are blessed with a cold front we're not, because we still have to have our windows shut because of the disgusting amounts of dirt. The motors are left running, the diesel motors are continually running, more often than not they'll leave the door open, the loud rap music is playing because these drivers seem to like it. --

CHAIRMAN KONYK: Just stick to the variance, okay.

MR. NEWBURY: It has to be contained, you have to make them adhere to the rules and regulations regardless of the cost. What about our cost. You have to contain this business and the more you get it away from us by insisting on the 20 foot -- you can't even consider variances with this type of -- for the nature of this type of business. You have to contain it, you have to make it as small as possible. The fence is in the wrong place it should be right up against that building. There should really not even be a gate there it should be -- they should bring the 18 wheelers in from where they used to on the south side of the property.

CHAIRMAN KONYK: Where's your property?

MR. NEWBURY: I am -- I'm on the north, I'm -- okay this is Vicliff Road I'm right here (indicating) is where I am. And we used to have a lot of buffer from this cottage that used to be here. Bottom line is he only bought this property because it was cheap to do it. His address -- the only thing on Military Trail is his mailbox. And he's got parking here for the people who run the business. That's the only thing on Military Trail, the business is on Vicliff. We've got 18 wheelers shutting down traffic trying to make this turn. We see them on a daily basis almost taking there loads

of dirt out here and violating because sometimes they can't turn properly and they'll go directly across I've seen many times directly across illegally into the cresthaven plaza.

See they used to be down here and the trucks used to come in here and you got a large plaza here, Military Trail, another large plaza here, a rental unit over here. Anybody that wants to come into that rental unit knows the existing conditions. We've been here for 18, 25 and 30 years, we weren't zoned the way we are now that's things have changed. And I beg you to not grant these variances. All this slick talking in the world means nothing. The bottom line is this is quality of life issues, this is health issues, this is depreciation of our properties.

Okay, listen to this they drew the plans in error because they drew them into the regulated setbacks. These guys have approved it in error, it was constructed in error, it was inspected, final inspection in error. Are you going to condemn us to the rest of our lives to living with everybody else's error's. And that's pretty much it but the bottom line is we can never open our windows again. The noise, it's phenomenal. It's 18 wheelers six days a week with sunday deliveries.

CHAIRMAN KONYK: We're going to all have to leave here and you-all can come back next month.

MR. NEWBURY: Can you just stand in my shoes and see what it would be like. How would you like it opposite you for the rest of your life. Thank you very much.

CHAIRMAN KONYK: Your name for the record?

MR. NEWBURY: K.J. Newbury.

MR. BASEHART: The first lady did you give your name?

MS. NEWBURY: Yes, I am Sandra Newbury.

MR. BASEHART: Okay.

CHAIRMAN KONYK: Anybody else from the public to speak on this item.

MS. BUCHANAN: Yes.

CHAIRMAN KONYK: And please do not repeat anything that's already been said.

MS. BUCHANAN: I'll try not to.

CHAIRMAN KONYK: Well, I'll stop you if you do.

MS. BUCHANAN: I'm Yvette Robert Buchanan, I live right across the street from this business. So if I could only locate myself on those plans. I

live right across the street.

MR. MACGILLIS: Where the orange building is, your across the street from the orange building.

CHAIRMAN KONYK: The big orange building.

MR. MACGILLIS: The big orange.

MR. RUBIN: You must be where the word soil is.

MR. MACGILLIS: Yes.

MS. BUCHANAN: The driveway he was talking about is my driveway and all day long I see trucks delivering dirt and soil and whatever you call it from his area to my driveway. And I have even a police report to stop that whole thing. With all that stuff and complaints he finally put a gate in his business. Since -- it will be two years pretty soon that he practice his business. And I've been there 20 years myself and all I can see now from my window, which I only have one front window in my property that I can look at. And the only thing that I see is truck after truck, loading, unloading, noise, fumes, dirt. I even bring you proof this morning, you know, I opened my window the last few weeks and I just pass a napkin on the verticles and that window and you'll see what kind of dust I have in my house. And my house is clean by the way I just wanted to have proof. So it will give you and idea.

CHAIRMAN KONYK: Are we going to enter that into evidence.

MS. BUCHANAN: This is evidence okay. So I just want you to have an idea of what we're going through everyday with that dirt and noise and fumes and etcetera.

CHAIRMAN KONYK: Okay, thank you.

MS. BUCHANAN: And please use some common sense and try to be in our place. What we are living. Thank you.

CHAIRMAN KONYK: You understand that if we do grant the variance this business isn't going away. And if we deny it the business is not going away.

MR. NEWBURY: We just want it as confined as it should be by the rules and regulations.

CHAIRMAN KONYK: Okay, I just asked a question sorry. Do you have anything you would like to add Mr. Koehler?

MR. KOEHLER: Just respond to a couple of the points. I have to do that for record purposes, I'll be brief. The major complaints dirt, noise, dust and fumes are legitimate. We're not saying

that they aren't legitimate. They have however been legitimately addressed through a very painful negotiation process with staff that has come up with a very heavy landscape buffer program that Mr. Kerr has described for you.

CHAIRMAN KONYK: But Mr. Koehler, not to interrupt you staff doesn't live there, have you tried to address this with the people that do live there. Have you tried to talk to them and come up with some kind of solution that would make them happy.

MR. NEWBURY: Never.

MR. KOEHLER: That's not true. I met with them the very first day before the code enforcement board. I was asked by staff to try to meet with them and I was refused. They did not meet with me and I stopped calling them. So I made an effort I extended the olive branch and it was rejected.

MR. NEWBURY: This is not true.

MR. KOEHLER: They did not return my calls. So they can tell you anything they want. The point is we know the neighbors are upset we have tried working with staff to mitigate the impacts to the maximum extent possible which I think we have done.

MR. WICHINSKY: Mr. Koehler, I'd like to ask a question it maybe irrelevant but I'm curious non the less. What are the days and hours of operation of the business.

MR. KOEHLER: That's a good question, the best person to answer that would be Mr. Randell himself. I believe it's 7:00 a.m. to 6:00 p.m. but Mr. Randell?

MR. RANDELL: It's seven until five.

MS. NEWBURY: Six.

MS. RANDELL: Five.

MR. RANDELL: Seven until five. On the Saturday we're there from seven until anywhere between probably one and three. We try to close down early and we don't open on Sunday.

MR. NEWBURY: But you take deliveries.

CHAIRMAN KONYK: Mr. Newbury, please or I'll have to ask you to leave.

MR. RANDELL: We did at one time have deliveries of sod that went into the yard on a Sunday when we're not open but we had concerns from the neighbors and we have seized to do that.

MR. WICHINSKY: I understand your hours of operation. And the frequency of your deliveries?

MR. RANDELL: The sod deliveries, the semi

trucks, the 18 wheel trucks that we are talking about on average we will get probably one a day. Seventy-five percent of the trucks that we deal in are all -- and you can check all of my records from the sod farms going back 15 years which is as long as we've been in business there, goes out directly to job sites. We only have sod that comes into the lot for people that want to pick it up, a residential person or deliveries --

CHAIRMAN KONYK: Okay, what about the dirt?

MR. RANDELL: Top soil deliveries we have two loads that came in on I believe it was tuesday. I haven't sold one cubic yard of top soil. I have forty yards, two 20 yard loads. I have not sold one cubic yard of top soil since tuesday. The piles are still there. Previous to that I don't believe we had a delivery of dump trucks for three weeks. This is not a daily occurrence, my business name as it goes here is Williams Soil and Sod. Ninety percent of my business is sod, installation and delivery. My dumb truck hardly ever moves but I have the capability to deliver top soil. I have that capability with a small eight yard truck, that's what I have.

If I may comment about the trucks that are supposedly backing onto the neighbor's driveway. The lady did call the sheriff up, I do have pictures of this and she does have the report there. We are serviced by Zephrehills water company. AT that particular time Ms. Buchanan was serviced by Zephrehills. The truck delivers right on my yard drove right upon her driveway, the next minute I've got a sheriff there looking at me. The common sense here if I have a truck that's coming in here why would I have them, if I have a gate here, why would I back onto the driveway. I have a gate here, I have a gate here this is a two gate system. There is no common sense, there is no reason for me to back onto this.

CHAIRMAN KONYK: So in other words your trucks now come in one driveway and exit out another driveway?

MR. RANDELL: We are trying to make this a wall --

CHAIRMAN KONYK: Can I ask a question?

MR. RANDELL: If you restricted that to an entrance on Ms. Buchanan's side only and an exit on the other side only would that help her out?

MR. BASEHART: Well, that's the way it's

shown on the site plan.

CHAIRMAN KONYK: Well, she's saying that they're backing out of that driveway into her driveway.

MS. BUCHANAN: They come in and out of that exit all of the time.

CHAIRMAN KONYK: Okay, what if we made it a condition that your trucks could only enter in that gate, would you except that condition?

MR. RANDELL: My trucks -- the semi trucks that pull into the property I have control over. I have control over my own trucks and I say lets come in off of Vicliff. We enter in here we go out there. I have no control, I wish I did, over people that come into my yard. I have tried to implement a one way route around -- through my yard. This diagonal here hopefully will stop people turning but it's out of my control.

CHAIRMAN KONYK: If you have an entrance and an exit.

MR. KOEHLER: My response I think Gilbert is going to pick up on it. We can post it saying one way entrance only.

CHAIRMAN KONYK: Right, that's what I'm asking.

MR. RANDELL: Yes, I have signs made up for that. But I haven't had them put up but I have the signs made up.

CHAIRMAN KONYK: Well, I would be inclined if -- my question to you was and please just answer the question that I'm asking you. If we impose a condition that said there had to be entry on that street and exit on that other side, would you enforce that?

MR. RANDELL: Yes.

CHAIRMAN KONYK: Okay, and would you agree to that condition?

MR. RANDELL: Yes, as best as I could. I could put the signs up and I can tell people -- yes, I'll do that yes.

CHAIRMAN KONYK: Continue.

MR. KOEHLER: We talked about the business, Mr. Basehart correctly pointed out it is not an issue of whether this should be there or not it is a retail business. It's been determined as such by the zoning code. I think the folks would like to see it move away, go away but it won't. The next best thing is to make the use as compatible, as non-infensive as possible. Again, in closing we believe

the site plan Mr. Kerr has worked out with staff will accomplish that. We would ask you Board members to approve the variance as requested subject to the revised conditions. The dates that appear in several of them are date revisions only. The site plan review condition -- excuse me the fence and gate condition number four, we've offered you a revision that I think staff accepts and again we ask that condition number six be revised as we have proposed so that we may avoid a trip to the development review committee.

CHAIRMAN KONYK: What if condition number six isn't revised as you have proposed?

MR. KOEHLER: Well, then we would hope that there would be some sort of limitation as Mr. Basehart was suggesting. That you would direct the DRC staff to limit the comments and approvals to the elements of the site plan that are shown of on this site. And not to go off into nether, nether land looking for a lot of additional requirements.

That's our major concern, setting aside for a moment the time that's involved and the money that is involved in applying for a formal site plan review. We just don't think it's necessary.

MR. MOORE: I guess the question I have to ask is relative to granting the variances at all. I mean it would appear to me that by granting these variance requests that you're allowing a much more intensive use of the property. Is that correct?

MR. MACGILLIS: I'd say no.

MR. MOORE: Well, okay if that's the case then why just not go ahead and meet all of the setback requirements?

MR. KOEHLER: Because of the hardship, Mr. Moore. We applied for obtained permits and at the cost of about 15 thousand dollars installed a concrete wall and wing walls with slab. If the variances are denied -- that was not something that we did without government blessing and permission.

MR. MOORE: However, the Board's not here I think to shield the county from whatever mistakes you may think they've made. Certainly you can go back and get -- recover your expenses from the county if you need to, I don't want to use the word sue but you certainly have that ability to do that. I don't think the Board should necessarily rely on actions of the county that may or may not have been correct in the past. In terms of what permits to give. I have a hard time understanding why this

facility should not meet setback requirements.

I think it's also true that if one is submitted to the county and is wrong or misrepresented and I don't know for a fact that that was done. I've had that happen in the past and this Board when something was brought erroneously approved then used for justification. I'm not saying one way or the other what happened. I'm just saying whatever approvals the county gave one way or the other in the past unless they have direct barring in this I don't think they weigh that much.

I'm having a hard time -- it appears to me, Jon, that by allowing these variances do in fact create much more intense use and I'm going to ask engineering. I have a hard time understanding how an 18 wheeler truck makes that turn that's shown there. I can emphasize with the neighbors. When you look at these photographs if I were to guess why the trucks back up it's because they can't make that turn or they make it perfectly and when they don't they have to back up and come back in again. And I don't know that for a fact either but a case like that can be made. We all live around trucks and we know what limitations they all have.

But I still haven't had anybody tell me why, you know, why it's not self created, why it's not -- if something that's particular to the land and why it's a hardship. I mean the fact that you're going to spend on doing something is not a hardship. A hardship is do you have reasonable use of the land without the variance. And I think the question is yes.

MR. RUBIN: Before Mr. Koehler answers that I have a related question which I want to get a comment from the county attorney first because I know what your answers going to be and it's probably going to direct my question. Obviously, Mr. Koehler in his memorandum today raised the estoppel issue. I want to first get the county attorney's opinion as to whether estoppel is a valid argument the applicant can make in this particular case in support of this variance independent of the seven criteria and depending upon your answer I'll ask Mr. Koehler to respond. And then I may want Mr. Koehler to ask his client a couple of questions on that issue.

MS. BEEBE: As a Quasey Judicial Board you're limited to consideration of the criteria in your government ordinance. You're not entitled to

consider or should not consider a equitable estoppel as an argument.

MR. KOEHLER: I'm going to absolutely object to that in October I asked the staff in the attorney's office to supply me with anything in writing that supports that blatant statement. They have never done that to this date and I will ensure you that the cases that I found say that due process of law requires these issues to be considered. I submitted that case to the county attorney's office, I have yet to see anything in writing other than these bald assertions that you are precluded from hearing the critical facts that caused all of us to be here in the first place. I'm outraged by that.

MR. RUBIN: Let me ask the county attorney, isn't it correct though that if there's an appeal of this decision and it goes to the circuit court and Mr. Koehler's secretary sends this memorandum. Wouldn't the circuit court be entitled to use the theory of estoppel at that stage when they're reviewing this board's decision on the variance.

MS. BEEBE: If my opinion to you is incorrect and on the record and in the record that equitable estoppel shouldn't be considered that's something they can review on appeal. Our position at the county attorney's office has been that they may have an action against the county for equitable estoppel but that's not the issue that can be considered by a quasey judicial board. I have never received any correspondence directly from Mr. Koehler on this issue and I would definitely respond to you if you had sent me a letter directly. Apparently there was a letter that had been sent to Rebecca Duke earlier.

MR. KOEHLER: I handed you the entire December 17th package on December 17th which contained all of these arguments.

MS. BEEBE: Right, that is correct you did send me a package containing these arguments. And I did review them and I did read them and I did read your case law.

MR. WICHINSKY: Mr. Koehler did I see in your packet that you had submitted tot he attorney general for an opinion on the same issue?

MR. KOEHLER: Yes, you'll appreciate what happened. The attorney general's office wrote back and said we would like to help you but only government agencies can request attorney general's opinions. However, if you would have your code

enforcement board chairman submit that request we'd conjure it. I promptly sent the package over to Terry Burner and Bill Pruitt the chairman of the board nothing has happened. So no-one has yet requested on behalf of a government agency whether this critical question or I should say a response to the counties unsupported assertion can the answer in the favor of allowing you to consider these critical factual issues.

MR. MOORE: We can still consider and decide that it's not an issue in this case, right. What about it is not an estoppel issue in this case.

MS. BEEBE: You can't consider --

MR. MOORE: I can consider it and still disagree with you.

MR. KOEHLER: Well, actually it's not a pure estoppel argument that I'm making anyway. As you know from materials that I sent estoppel means that the county can't even raise the code requirement. Because they had their chance, they waived it and we relied -- but that's not what we're saying. What we're saying is that they need facts and circumstances which I spell out in my memo in this case the issuance of a permit through alliance and so on that don't apply to anybody else. And we relied on those permits.

MR. MOORE: If that's the case --not make the case that you shouldn't be hear for a variance request at all?

MR. KOEHLER: That's exactly the argument they're offering to the code enforcement board, but because the attorney's offered the opinion they did I didn't have a chance to get those equitable estoppel arguments heard. And I frankly was very upset with the code enforcement board's decision finding us in violation even though all of the county staff admitted that the permits were issued.

MR. MOORE: Well, then maybe what we should do is postpone it until you go get all of that figured out.

MR. KOEHLER: I don't need to do that you have all of the material you need, Mr. Moore, the materials have been submitted.

MS. BEEBE: I'm not saying that you cannot - - that there aren't fairness issues inherent in your criteria that you can't consider. I'm saying that the argument -- the legal argument of equitable estoppel is something that you shouldn't consider.

MR. BASEHART: But he's not pressing that argument, right. Because pressing that argument would mean that he'd be telling us I don't need to be here I got my permits, I got my inspections, I relied on that, I spent time, effort and money in reliance on those permits so you can't make me take it out. So -- and he's not making that argument right?

MR. RUBIN: That's the argument that he actually makes before code enforcement on appeal basis I assume.

MR. KOEHLER: Yes, let me answer I know, Mr. Rubin, is kind of asking although he hasn't said the words yet. Why didn't you appeal the code enforcement board decision in the court. Here is why, we know that the only addressed the storage bins and the wing walls issue. That all of these other issues were still out there. Mr. Dominaic Simms the director of this department, Mr. Hodgkins, Mr. MacGillis and staff had said to us why don't you just submit to the variance process this way we can tie up all of these issues and it will be over and done with.

As Mr. Basehart, well knows this is a -- you know as the Board of Adjustment, this is a classic way the county deals with situations like this. Regardless of who made the mistake or what problems were developed the way to solve the problems is to come to your Board, the board of Adjustment. Looking to put things right and eliminate the controversies. I explained all of that to my client and he said listen I'd much rather spend money working with the county. And as you can see we've done that with the recommendation of approval that we have today, rather than go ahead and carry this uncertain result legal fight into the court system. So that's why we are here today.

MR. RUBIN: Other than and I see you're using the estoppel in two different way's. One you couldn't use the estoppel as in the seven criteria. Two estoppel as justify the seven criteria. Are you setting forth or putting forth today your petition any independent grounds. Let's assume that you're coming in fresh you haven't gotten through the permit process yet and then you're asking this Board to grant the variances for the wall and landscaping. Are you -- do you ave any evidence to put in the record which says that independent of the estoppel that we should grant the

variance, under the seven criteria without the errors?

MR. KOEHLER: I can't do that, Mr. Rubin for the simple fact that the issuance of those county permits that produce those structures within the setback that is the problem that's what we're seeking to correct. As you know normally you offer other unique circumstances that weren't of your own creation that resulted in this. There are no arguments like that.

The guts of it has to do with the permits that were issued by the county. And by the way those permits were issued in March and April in '97, everything was constructed CO'd, final'd, everything operating, the neighbors complained and I think as they said they had valid complaints and that's when code enforcement went in and said what's this setback you're suppose to have a 20 foot setback. Our answer was well here's the permit, it was the county zoning reviewer who penciled in zero foot minimum setback. That's what Mr. Roland testified, he was the contractor who had those discussions with staff.

So he wasn't misleading anybody and by the way, Mr. MacGillis made us aware early of a point that I think you gentleman made that we don't use the variance process to cover over someone's perfidy, someone's lying, someone's misrepresentations. And there was never any of that made and again Larry hasn't testified to that but surely he went before the staff and said what do we do here that's when staff wrote zero minimum setback and his reliance on that, that caused us to come here and that is what I say is the basis for the uniqueness argument that we offer.

I don't know how often you have heard arguments from people seeking variances that it was government permitting that put them in this position. Although I kind of remembering hearing something along those lines earlier today. But that is our situation and again staff has been very rigorous with us. As we said through David Kerr's testimony earlier all of these issues, we do not want to come up with this change in the gate because that gate to was permitted and in existence for well over a year.

But out of the good faith dealings with the county we said, and by the way my client was not happy about this, we said we've got to come up with

an alternative plan that provides for that 25 foot stacking that get's those vehicles off of the street and blocks to the maximum extent possible the view of the storage areas from the public right of way. We've done that and Mr. MacGillis has signed off on that and that's why we're here with a recommendation of approval. Again, this has been a -- I really think a completely unique case. I'm certain that I have not had the experience with anything like this in my career and I hope that you acknowledge the uniqueness and grant -- take the staff's recommendation and grant approval.

MR. RUBIN: Personally I would like -- assuming per chance that the estoppel argument applies notwithstanding your statement. I would like to here if you can present it quickly what happened when the contractor submitted the application. I know members of the public in opposition had made the statement more than once that the contractor submitted quote, unquote incorrect plans. I think one of the keys to estoppel is good faith. So I do want to find out directly from the contractor how it came to be that his plans had the zero foot or whether -- how they got the zero foot and why it wasn't readily available or known to the contractor that --

CHAIRMAN KONYK: The public portion of the hearing is closed, I'm sorry.

MR. NEWBURY: I can clear this up.

MR. KOEHLER: We'd like to respond to Mr. Rubins question by asking Mr. Rowe to step up to the podium with the original permit application and drawings in hand and if you will answer just a couple of questions. Why don't you come up here Larry so the Board can see you directly. Tell then who you are, where you work and what your licenses are.

CHAIRMAN KONYK: And you've been sworn in correct?

MR. ROWE: Yes.

CHAIRMAN KONYK: Your name?

MR. ROWE: Larry Rowe, I'm a swimming pool install contractor and I'm also a general contractor. I've been working for a couple of other businesses before I got my own license dealing with setbacks and we build pools, spa's, bath houses all met by setbacks these always arise. This is the original permit application it says on here slab is for holding soils and rock. This is what we

submitted this is the actual original one that we hand wrote in and handed in. This is what we granted to. It also say's when they did it about the slab and suggest well this is not right we didn't try to sneak anything in this is very obviously the right way to do it.

The day we were pouring the slab -- the day before poured the slab the field inspector said why is this on the plans. We were told to put it on -- we went down to the housing department and they said put it on the property line if it is going to be a six foot wall. We said what about maintenance, they said no it's fine put it on the wall, so we did it. He says Larry I got to go check that out so the day before I had the concrete coming I had to go back down here and I got it signed off two different places. Zero minimum, zero minimum and these were all our copies in the field and this is the actual county. Put the wall on the line or we got to deal with the setback issue. We put it on the line just like we drew, just like we were approved.

MR. MOORE: Isn't there an issue here. It's true that you can put a wall on the line and you can put a concrete slab on the line there's no doubt about that. The question is how is that going to be used relative to the commercial use of the property?

MR. ROWE: Soil and rocks is what we are permitted for and I didn't just write this in in hand and walk away. I walked through the process so we went, we just took the wall where it was from the old business and just put it back. That whole business -- that house that they tore down was up against a wall just like this.

MR. NEWBURY: No, no, that's not true, that's another lie.

MR. ROWE: That's not a lie, we didn't try to deceive anybody or anything.

MR. MOORE: Looking at this from a personal standpoint having that much material up against a wall that close to peoples houses did you think it would be an impact when you were putting it in.

MR. ROWE: Well, actually I thought that would be nice to kind of block that view off when they tore that house down. These guys I know they're going to have noise but noise is going to be there no matter what.

MR. MOORE: Did you see the picture of the dump truck?

MR. ROWE: Yes.

MR. MOORE: Would you object to that if you lived there?

MR. ROWE: It doesn't matter it's commercial zoned and there's an adult book store right across the street which I'd much rather not have my kids around than a sod storage facility and a landscape place.

MR. KOEHLER: Besides we're going to increase the buffer very substantially with the trucks and traces you've seen.

MR. ROWE: I mean it's very clear what we were permitted for, we went about this the right way. And we relied on the good faith of the county to tell us what to do when we asked and it was questioned went back and this is hand written in by one of the engineers that we walked in and talked to here at the county. We did what we were told to do and 18 months later after CO they said hey you've got a problem. We did everything right and we've been addressing every problem that they have asked us to do and this is costing lots of money and lots of time as you-all know. And it's not like we tried to sneak anything in we went about this the right way.

MR. WHITEFORD: Madam Chair, let me just interject very briefly. Bill Whiteford, again for the record and I don't want to get side tracked on this issue of the morality of it, the ethics of it and that type of thing. I believe that the plan reviewer over looked the fact that this storage bin was going to be put adjacent to the wall for the storage of the material. As it very clearly says in the permit, I think it was an oversight. The wall's are permitted on the property line that's why the wall is there, I believe it was an oversight.

Not with standing and never the less Mr. Rowe as a general contractor also has an obligation to be familiar with our rules and regulations. It's fifty, fifty of course we did have plan reviewers who should have caught it, we had an inspector go out to the site who should have caught it as well, It wasn't. Everybody is at fault not just the county and in addition to the outside of the wall not being finished again it's a code requirement, Mr. Rowe should be aware of it. Again, our inspector should have caught it as well and the blame goes all the way around.

MR. ROWE: I am aware of it and that's why I questioned it and I got it okayed. I deal with

setbacks every day in my job. When we go in -- he would never have bought this property and built on it if we couldn't have done this. We brought this in before he demo'd the house and checked with Mr. Wong if this was okay to do or he would have never spent the money to demo get the proper permits and demo just to do this. And this was a well thought out plan with the county. We didn't just come in here knock a house down and put a business in.

MR. RUBIN: Why wasn't your understanding from the general contractor's perspective that the zero foot was the proper setback.

MR. ROWE: Because as he said walls are permitted on property lines. We came down with a preliminary plan, stamped by an engineer is this going to be okay, are we going to be able to do this, or what do we need to do. Because we even asked what about maintenance, I know I'm doing a wall now they wanted a two foot thing just so we could stucco it and paint it for maintenance, pressure clean it or whatever down the road. Which to me is a very good idea, but we came in and asked and they said put it on the property line.

I mean it's handwritten in here after we submitted it. It got approved and it got checked in the field, and then it got reapproved. And we built it and 18 months later they're saying we're wrong. We went about it the right way again we did not try to sell anything we went the right channels and asked the questions. The plan was checked in the field and then went back and rechecked.

MR. MOORE: Would you independently check the code yourself as opposed to coming down and saying --

MR. ROWE: Yes.

MR. MOORE: If you would have got the answer you didn't like from one staff member would you go to another until you got the one you liked?

MR. ROWE: No.

MR. MOORE: I mean to me that's the problem here is your going to have --

MR. ROWE: Three times we asked the question and three times we got the answer.

MR. MOORE: Did you check the code yourself?

MR. ROWE: Yes, we did. We went through the code book, six foot walls are on there, the wing walls -- you know what our problem was. They didn't want six foot walls coming out from it. They were afraid of us stacking to high so they made us put

three foot walls out. That was changed our original submittal was six foot, the county said lets drop it to three foot so we can't stack materials over the wall. We did that.

MR. MOORE: So you're disagreeing now that the code requires a ten foot setback or a 20 foot setback?

MR. ROWE: Well, Mr. Koehler approached it and -- three times and we did what the county asked us to do.

MR. MOORE: Mr. Koehler, do you disagree that the county code requires a setback?

MR. KOEHLER: There's no question that he code requires a setback. That's not the issue.

MR. BASEHART: I think the issue --

CHAIRMAN KONYK: I think that's why you're here for a variance because they know that the code requires a setback.

MR. BASEHART: I think the issue, otherwise it would be another interpretation --

MR. MOORE: I just want to make sure that they agree and what I don't understand is why --

CHAIRMAN KONYK: They do agree that's why they they're requesting a variance, Mr. Moore.

MR. BASEHART: I think the issue here is not that -- it's clear from staff's testimony and the applicant's testimony that nobody blatantly and on purpose violated code. Everybody ***** everybody but sometimes those things happen.

MR. MOORE: It's not the position of this Board to make oversights on whomever's decision -- it make it right.

MR. BASEHART: No, the issue here is --

MR. MOORE: Especially when it has this heavy of an impact on others. I think I'm not even sure this is ***** , you know, what other evidence do you have to meet the seven criteria other than the estoppel issue?

MR. KOEHLER: The key issue other than estoppel -- I told you the facts of this case are crystal clear on estoppel. And some of the citations I offered to you involve Boards of Adjustments asked to overturn permits that were issued. And the courts and the Board's of Adjustments themselves found if the general duties of the building inspector incorporated this kind of review, which Mr. Winneski (ph) of the zoning division clearly did. And the various other county officials who reviewed it were acting within the

scope of their authority, and there was good faith reliance, and there was good faith reliance we've proved that by our testimony. To our detriment we've spent a lot of money, then the government can't come back and get a second bit of the apple. The permit stands the rights have been vested.

That's the guts of our case which we think is completely unique. Remember the test isn't whether we can meet equitable estoppel which we can. It's whether we can satisfy the seven tests for variance relief. We've offered the estoppel argument in support of the claim that these are unique circumstances that are unlike anyone else and were not created by us. True the construction took place by us but it was ***** to a valid permit issued by the appropriate county officials. That is the heart of the case.

MR. RUBIN: By the way sometimes you can misconstrue ***** I have not -- I am very troubled by the county attorney's statement that estoppel does not apply.

MS. BEEBE: I'm not saying that it isn't an argument that can't be raised. All I'm saying is this is the incorrect forum to raise it.

MR. RUBIN: Well, that's the trouble I'm having. It's -- I haven't seen any counter arguments to the applicant case law. The case law seems to be clear that the governments have used estoppel in the past as long as you have approve the elements. It seems to me that -- again I haven't done any research but it would seem to me that when it gets to the circuit court if there's an appeal to this decision that I don't know the reason why estoppel wouldn't apply.

And I constrain because you have advised the Board that we should not consider it and as a member I must abide by that whether I personally disagree with it.

MS. BEEBE: I can assure you that I have read Mr. Koehler's memo that he had sent to the Board that was faxed to him and I apologize for saying that. ***** I have read his cases and none of them say directly that a Quasey Judicial Board meeting certain criteria cannot ***** in granting an ordinance. There are many cases that say they ***** limited consideration and criteria ***** according to the ordinances. And by parting from those and by parting from the central requirements of law which is now in review. And if

you want citations from the case I can get them to you.

MR. RUBIN: No, I recognize what you are saying I think that's the general ***** statement of the law but it just doesn't make sense that if he gets to the circuit court level -- if this Board under the facts presented knows there is an estoppel why is there an additional step. Why can the circuit court grant the estoppel where we can't even consider it. We must first make an incorrect decision *****. If you can get to the circuit court ***** use of estoppel --

MS. BEEBE: There is also a case law that says Quasey Judicial Boards are not allowed to consider arguments that are primarily judicial in nature. And this is an equitable remedy therefore, it is arguable that this is not something that you should be considering.

Now I think Mr. Koehler is correct when he says that fairness issues and whether his -- particularly whether the conditions were created by the applicant should be considered by the Board.

MR. MOORE: If there is an estoppel issue and then if there's reliance then they don't have to be here. And if they don't have to be here then we shouldn't be ruling on this. That's one, if there's not estoppel issue then we should look at the facts as they appear on the ground before us and if there's an appeal it should be handled in the circuit court.

But for me to say the county may be in conjunction with the petitioner then something we now have on the ground. And we're going to come before this Board to make it right legally, and to put the burden on the other individual I don't think is correct. And I think that the people in these neighborhoods are in a much less position where they can fight these issues. I think estoppel issues require Board action with evidence, and cross examination and much more facts than we get presented before this Board.

And I'm not going to just assume that they would prevail in courts on an estoppel issue in order to make this case. The question is, is there anything else that would meet the seven criteria for these variance requests. And I don't think -- I just can't see allowing what's going to be a -- if a variance request is granted it's going to have a much more intense use of this property.

MR. KOEHLER: A couple comments I have to make to Mr. Moore. First of all, Mr. Pruitt the chairman of the Code Enforcement Board after hearing from the assistant county attorney's office asked for a poll of the members of the Board. If you are allowed to consider the equitable estoppel item, how would you vote today. And unanimously they said we would have found for the respondent in this case.

Secondly, I'm interested in -- and again I haven't seen anything from the attorney's office to support the argument that you heard her make today. It's been since October 7th that I asked for something in writing that shows the county attorney's thinking. What they're basically saying is well you have to show me, Mr. Koehler, something that says Quasey Judicial Boards can consider equitable estoppel defenses before you are allowed to hear them.

I'm sorry that's not the way the system of law works in this country. The government is suppose to specify things that are prohibited. You can't just imply that something is prohibited, because in this case it helps the counties position. Wouldn't it be wonderful if this equitable estoppel argument approach could be handled all the time by the county. And I argued in my documents what would be to stop the county from in the future going after people and saying oh we made a mistake. You've been in business for 18 months like my has been, but we see there was a problem here our staff error. You're going to have to go back and correct that at your expense.

That -- don't grant the variance in this case which in essence sends a message to staff that when there's an equitable estoppel detrimental to the situation you have to work with them to try to make amends and try to reach a happy middle ground. Which is what we've done here and there won't be any motivation for staff to try to correct these errors in a reasonable way. They're just going to be dictators, they're going to be arbitrary and capricious and I don't think you want to see that happen.

MR. MOORE: I'm also concerned about what's equitable for the neighbors. And I think the case in my position I think staff's coming before this Board -- using this Board in a position that you would agree with. Not that they're using estoppel -- if you take the staff recommendations for

approval they're coming also before this Board and saying let's give variances and make it right so be it and everybody goes away and nothing nasty happens. I don't think that's the right approach. I think that there's been mistakes made and this Board should not be used for that purpose especially given the impact to this project.

MR. KOEHLER: I don't disagree with you Mr. Moore that your Board should consider itself independent for viewing everything staff, and the petitioners, and the neighbors present. I agree with you on that, Mr. Kerr has been eager to respond to something that you made with your permission, Madam Chair.

MR. KERR: I'm not going to talk about estoppel because I think it's irrelevant here. You've talked about the intensity of the use. The intensity of the use is two fold. Volume are we adding more encroachments, are we bringing more trucks in, or intensity can't we do something to make the volume productive instead of a loss. The variance that we're requesting before you today does just that. Let's be aware of the way that wind moves over a wall. It comes over the wall blocks the wind and you've got an area of protected calm air and then the wind touches back down. So there is a certain distance from the wall ***** west wind protection. The same happens when the dust moves with the wind and noise behaves in exactly -- well I won't say exactly but in a tremendously similar way.

By moving -- by not granting this variance, by taking the storage and loading area from here and moving it to meet a 20 foot setback, you're now allowing us to load from this side potentially, to drive trucks around this side. You're allowing this whole dust pile to be over here and have this whole room to get up and over the wall and into the neighbors. Sound the same thing up and over the wall. The way we have configured the site is to help the neighbors. Now this gentleman can disagree if he wants but I would invite him to consult an acoustical engineer which I have done. And also --

MR. NEWBURY: I invite you to come over to my house. Come on over and spend a week in my house.

MR. KERR: Anyway, well, I'm going to address the gentleman's argument there. Unfortunately, this is one of the great things about eastern homes, Ladies and Gentleman, if we're not

going to develop out west more and more of us aren't going to have those pastoral scenes next door. Businesses, higher intensity residential and things are going to come in. It is the cost that we pay for population growth. The answer isn't so no and tell businesses to go out because business are what pays largely for government. We've got to find ways to work together and that's why I'm in this now. We're trying to make the neighbors happy. I can't debate the man the noise is there but it's going to be worse 20 feet out. The dust is going to be worse and in addition to that we've instructed --

CHAIRMAN KONYK: We're all going to be leaving soon so we need to rap this up.

MR. KERR: Hopefully I've got it all on point for you.

CHAIRMAN KONYK: Does anybody have any other questions of the applicant.

MR. RUBIN: Madam Chair, since we are Quasey judicial I know Mr. Newbury probably wanted to say something in response to what was testified to. I wanted to give him that opportunity. I do know that the public hearing is closed but I feel he has a right to respond to something that was said.

MR. NEWBURY: Very quickly, Mr. Rubin, and I do appreciate the opportunity. I'd just like to go back in time to one of our many meetings in this building with Marty Hodgkins and Terry Burns, and Terry Burns specifically told me -- and I've heard lies here and I'm not a liar and I will not tell you a lie. Terry Burns told me that once every two years something like this comes up and slips through. And that the original application was for a wall on that border, on that eastern border between the Hodges and the dirt devils here. And if they granted that permit for that wall only is what Terry Burns specifically told me.

So the way I see it they intentionally misrepresented to the staff, this is my belief and I eminently oppose anybody who disagrees with me that they specifically went with this knowing -- you've got a contractor, you've got licensed people who draw these things for a living. You're telling me that they don't know anything about these 20 foot variances. No, they mislead intentionally because then they can use this gestapo act as I'm calling it.

CHAIRMAN KONYK: Okay, alright thank you. Please sit down. Let's get this going here. Do you

have anything else, Dennis?

MR. KOEHLER: No, ma'am.

CHAIRMAN KONYK: Does staff have anything else?

MR. MACGILLIS: If you want to go through the conditions, I don't know where you are with this.

CHAIRMAN KONYK: I don't know where we are either.

MR. MACGILLIS: Before you do make a motion staff would request the opportunity to amend -- to respond to his changes in the conditions.

CHAIRMAN KONYK: Let's see if we can get a motion here.

MR. RUBIN: Do you want that opportunity now or --

MR. MACGILLIS: If you're going to deny it then we don't need to go over the conditions. If you're going to approve it then we would ask the opportunity to go over them.

CHAIRMAN KONYK: Is anybody prepared to make a motion on this item.

MR. RUBIN: I still don't understand. Do you want to go over the conditions now?

CHAIRMAN KONYK: No.

MR. MACGILLIS: If the motion is for denial the conditions are no need.

MR. RUBIN: What if they're for approval?

CHAIRMAN KONYK: Then we'll go over the them.

MR. MACGILLIS: Then well go over them. I don't know what the motion is yet.

MR. MOORE: Do you have to have the conditions for approval to make a decision?

MR. MACGILLIS: I don't think so.

MR. BASEHART: Alright, well then I'm prepared to make a motion. I'd like to make a motion --

MR. RUBIN: Well, let me interrupt. I presume your -- I guess we could go ahead and make the motion but your motion is going to include the conditions.

CHAIRMAN KONYK: Well, no we've already said that we have to nail down what the conditions actually are after the motion is made. If the motion is made for approval then we understand that we're going to have to talk about the conditions. If the motion is made for denial then we understand that we don't have to talk about the conditions.

So I guess it would be appropriate when Mr. Basehart makes his motion if it is for approval to leave some leeway there so we can make discussion on the conditions and get those resolved. You can do that.

MR. BASEHART: Okay.

CHAIRMAN KONYK: So go make your motion.

MR. BASEHART: I'd like to make a motion for approval of the variance BOFA 98-100. Based on the staff analysis and the recommendation. I understand we had a lot of discussion over equitable estoppel and I know we're not applying it to this case. Although the equitable issues in my mind are applicable to some of the criteria as has been pointed out in the staff report. I think that the issue here again, we're not talking about a land use issue because this isn't a zoning petition and this Board has no authority to approve or deny a zoning petition. The use that's there is there it can be there it's a permitted use. The issue over the setbacks from the bins is really related to providing adequate buffering.

I understand what Mr. Kerr said and I agree that a buffer has two elements. A buffer is intended to shield noise, odor, glare and all of the other things from adjacent properties and to provide a visual separation between two land use activities. There is two ways to establish an adequate buffer.

MR. MOORE: Can I make a point of order here.

MR. BASEHART: No, I'm pleading a motion.

MR. MOORE: That's not a motion. A motion is whether you want to approve something that addresses the seven criteria. What you're doing is making a rational and discussion during the motion. I think that should be separated. I make a point of order.

MR. BASEHART: The way I've been trained is that when you make the motion you're suppose to justify your motion for the record.

CHAIRMAN KONYK: Let's let the county attorney address that.

MR. MOORE: By making the motion ***** your position --

CHAIRMAN KONYK: Okay, let's let the county attorney address it.

MS. BEEBE: If in his motion he is addressing the seven criteria justification for the item then it can be part of his motion.

CHAIRMAN KONYK: Can you continue or do you need to start over again.

MR. BASEHART: No, I will continue.

MR. MOORE: Bob, I will appreciate then can you address the comments you make to each of the seven criteria and how they apply.

CHAIRMAN KONYK: I think that's what he's doing.

MR. MOORE: I haven't heard any of those seven criteria.

CHAIRMAN KONYK: He's justifying the seven criteria through his motion. He's not addressing them individually. He's addressing them in general.

MR. BASEHART: One of the important issues is mitigation in the case of the variance. How it will effect -- how granting the variance will effect the surrounding properties and the use and enjoyment of their properties. And that's why the code requires buffers between different types of land uses, compatibility buffers. There are two ways to achieve the impact or the effect or the desired impact of a buffer and that's through plant material and other physical barriers that will prevent noise and odor and glare and all of those other things in visual impact from penetrating the buffer.

I think that under the circumstances that this is a good solution. I think that if the bins -- if this variance request were denied and it was possible to move the bins 20 feet from the property line instead of ten as proposed without a requirement which the code doesn't require would be significant amount of landscape buffering that's being offered here to mitigate. I think the impact of the bins and of the activity associated with the bins would be greater than with the granting of the variance.

So I think it's a -- I think that this is a solution that brings us more in compliance with the objective of the code than the requirements of the code would actually do. And so without going through all of the seven criteria, briefly, I think that this is a unique circumstance because if the permitting scenario that occurred which we have discussed in more detail than I think we need to. And I think that granting the variance will not provide to the applicant a unique or any unique benefits that aren't available to others. And I believe that granting the variance will not add a negative impact on the enjoyment of the adjacent

property owners of their property, because I think that by meeting the requirements of the code you got less protection than what this plan is going to provide.

I would like to attach conditions to the approval as recommended by staff with -- Jon, do you have any problems, I got this handout from Mr. Koehler. He wants to change conditions one, two, three and five, change the dates.

MR. MACGILLIS: I can just go through them one by one.

MR. BASEHART: Yeah, why don't you do that.

MR. MACGILLIS: The first condition staff doesn't see any need to change he's only recommending a change by one day less. So staff will recommend that condition still remain that by March 21, 1999. The second condition also would remain the same by March 25, 1999, the wall will be architecturally treated. Number three he's not recommending any changes that's consistent with what's --

MR. MOORE: What?

CHAIRMAN KONYK: Okay, he's going by his amended conditions. I guess Mr. Koehler was referring to what the conditions were last month. So I think you should disregard what Mr. Koehler gave us because some of those items --

MR. MACGILLIS: Well some of these I'm just going to incorporate in.

CHAIRMAN KONYK: Well, where are the conditions in the staff report.

MR. MACGILLIS: Page 67.

CHAIRMAN KONYK: Okay, let's look at that and I think that will clear up the date thing. I think they've already corrected the dates in here.

MR. MACGILLIS: The first condition Mr. Koehler was requesting that be changed to March 20, 1999 and staff is recommending that that remain at March 21. It's only one day different.

CHAIRMAN KONYK: So he's showing it February 17th to March 20, so he's going by last month's staff report that's where the problem with the dates is. So that's why I say everyone should refer to this one for the dates.

MR. MACGILLIS: The second condition will read by March 25, 1999 the walls will be architecturally treated. And number three, shall read by February 3, 1999, the legal point of purchase sign shall be removed. Condition number

four, I'll read it from Mr. Koehler's with minor modification the gates located at the entrance to the site off Vicliff Blvd., shall be kept closed, except when vehicles are entering or leaving the site, or during business hours, which are going to be 8 a.m to 5 p.m., when they may remain open at a width not to exceed 15 feet. This will ensure the storage area is screened from the residential street. The gate needs to be setback, as shown on Site Plan, that's going to read exhibit 45 consistent with the new number that was submitted at the hearing today, presented to the Board of Adjustment at the January 21, 1999 public hearing, to ensure trucks do not stop in the road. Number --

CHAIRMAN KONYK: So which condition are we going with Mr. Koehler's or yours?

MR. MACGILLIS: Just the way I read it.

MR. KOEHLER: It's acceptable.

MR. MACGILLIS: Number five, we will be going with Mr. Koehler's with a minor modification. The landscape planned details shown on Site Plan, Exhibit 45, not 27, presented to the Board at the January 21, 1999, public hearing, soon and so forth as it reads. Condition number six, going with Mr. Koehler's language with minor modification -- okay this one we are going to go back and the Board can direct me how you want this to read. We would say by February 21, 1999, the applicant shall submit a Site Plan to the DRC committee for approval of the final sites layout, for only the area effected by the variance. This plan shall be consistent with Exhibit 45, and I'm reading from page 67 of the backup material, presented to the Board of Adjustment, at the January 21, 1999, public hearing, any modification shall be reviewed by the BOA staff to ensure the intent of the Board's approval is consistent with proposed changes.

MR. BASEHART: Mr. Koehler says?

CHAIRMAN KONYK: Is number six acceptable?

MR. KOEHLER: Let me just check -- I think it might be I just want to ask Jon. Jon when you say that we have to submit the site plan, is that -- and I appreciate your effort to limit the review only to the area effected by the variance, the public access.

MR. WHITEFORD: Before we get -- I don't want to belabor the point but my understanding Jon, is that the Board of Adjustment can approve the site plan. It sounds -- if the DRC is not going to

accomplish anything by reapproving what you've approved then there's no sense in going to the DRC. The intent of going to the DRC was to tie up some of those loose ends associated with this piece of property. This is not just one problem. The setback, the outdoor storage area is only one problem the property is having.

They were cited by Code Enforcement for a couple of other things. Principally lack of pavement and drainage. And that's an item that's still outstanding that they have a date certain to resolve by Code Enforcement. And our idea, of course, is to tie together all loose ends under one plan, to be approved by the DRC. Not only for ourselves but for the property owner as well. If it's not going to accomplish that then there's no sense in going to the DRC.

CHAIRMAN KONYK: Well, then does the staff agree with that.

MR. MACGILLIS: Before you came in a discussion Mr. Basehart brought up, he asked the same question. Why we're making them go through DRC because we were concerned in enforcing these conditions through the building permit stage. We already realized that an error was made on the first floor of the building division when they issued these two permits. That we wanted as you said for informational purposes only, but I think Mr. Koehler indicated later on in his discussion that he could accept the condition that it's only on the effected area. Which is typical what we do our site plan approval on at the Board of Adjustment. Whatever the DRC see's they usually at the DRC has to stick to the effected area that you approved at the hearing.

MR. WHITEFORD: If the concern is missing conditions I can assure you that the permits won't be issue in error. I think going to the DRC is not going to improve our condition at all if any. We have in house procedures that I think would address making sure the conditions are correctly monitored. As I mentioned earlier the idea for me at least in going to DRC was to incorporate all of the other elements that are approved today. There are some loose ends here and this plan is not an accurate reflection of what can be built or should be built out there today.

CHAIRMAN KONYK: Okay, so what condition are we going to go with on six. How are we going to

read that condition?

MR. MACGILLIS: Well, that's up to the Board.

MR. RUBIN: From my perspective six is unnecessary.

MR. WHITEFORD: For me if you go with the language that Jon was reading into the record --

MR. RUBIN: As long as ***** the variance pursuant to this drawing then that's the most the applicant can do. Any other process is --

MR. MACGILLIS: Bill is suggesting that you go with number six the way it's worded because he would like them to go through site plan review to tie up all of the loose ends. But if you're not going with six he really doesn't want you to go with the amended one which I just read in.

CHAIRMAN KONYK: Okay.

MR. MACGILLIS: So if you want to keep it the way it is now -- the way it is on page 67 that is that they go to DRC, they tie up of the loose ends and we have a controlling site plan.

MR. BASEHART: That's what you're recommending. Leave it the way it is?

MR. WHITEFORD: That's what I'm recommending. I know Dennis object tremendously.

MR. KOEHLER: Our point, again I'm not speaking just for myself but on behalf of my clients who feel very strongly about this. Is that the language that we've offered to you would accomplish full control by the Board and certainly all other permitting elements of the county over the site plan that we presented to you today.

MR. WHITEFORD: What we don't want to do is add any credibility to this plan and code. The variances and those items that have been addressed by the variance, yes. And those conditions, yes, but there are certain other things that need to be done on this piece of property that this plan doesn't accurately reflect. Principally paving and drainage.

MR. KOEHLER: Mr. Whiteford wasn't here earlier when we pointed out through Mr. Kerr's testimony that in fact we have preliminary approval from the -- or at least there have been discussions, conceptual approval from land development. For the paving and drainage you see the retention area that is shown on here as represented by our project engineer Charles Walton (ph).

MR. BASEHART: My feeling is somewhere --

MR. WHITEFORD: That's true I wasn't here and I apologize.

MR. BASEHART: My feeling is somewhere in between. The Board of Adjustment has considered this overall site plan and I believe that generally speaking that the code provides that when the Board of Adjustment approves a site plan and you're not suppose to vary from that, or at least substantially. My concern is that it would go in the DRC process and then the DRC would want to make wholesale changes to the site plan which then in my own mind may or may not alter the way I would have thought about granting the variance in the first place.

So what I'd like the condition to read is that it has to go through the DRC process. And that solves part of Jon problem that being that we will now have a mylar that somebody will have to look at when they come in for permitting and then the chances of something slipping through are slim. What I would like to have -- I would like the condition to include an instruction from the Board of Adjustment that the only changes to the site plan that the DRC should make are those that will be necessary to bring the plan into compliance with the code.

MR. WHITEFORD: That's acceptable.

MR. BASEHART: Except for what we've granted the variance.

MR. WHITEFORD: Absolutely.

MR. BASEHART: That's how I'd like that condition to read.

CHAIRMAN KONYK: Mr. Koehler, do understand and agree with that?

MR. KOEHLER: I understand it I think Mr. Basehart is making an attempt to be Solomon like in his decisions, recognizing the competing sides. We do have deadlines that the Code Enforcement Board has set that I'm sure will have to be slipped a little bit if we're going to comply with this formal DRC submittal.

MR. WHITEFORD: I think that we can commit to a -- we have several processes that may be in order to save a little time. We have a two day, a two week and a five week DRC process. We can take this to our two week process first, signature only, pushing back any type of code enforcement dates. We don't want to mess with those dates.

MR. KOEHLER: I have to look to my clients

and tell them that under the circumstances I think that this is perhaps the best that we can achieve in terms of a condition involving site plan review. It's expedited and I would recommend to my client that they accept this revised condition involving site plan approval. The clients indicate yes.

MR. MISROCH: One quick addendum to the conditions and that is that we supply traffic flow signage at this property as we talked about before.

CHAIRMAN KONYK: And that would be another condition?

MR. MISROCH: That would be in addition.

CHAIRMAN KONYK: We're still getting through them so.

MR. MACGILLIS: Six, we're okay on six. Seven, staff would recommend it remain the way that it is, no Variances shall be granted for the on-site parking and drainage requirements. And number eight the hours of operation shall be limited to 8 a.m to 5 p.m. the business shall not operate on Sunday or shall there be any outdoor activity on Sunday. And nine, vehicles shall only ingress the site from Vicliff Road and egress from Dale Road.

MR. BASEHART: And appropriate signage shall be placed.

MR. MACGILLIS: I might as well make another one ten, the signage coming into the entrance. You mean coming in off of the streets. Okay, by --

MR. BASEHART: Well if we're going to go through a DRC process it will be a two week --I'd make it by --

MR. MACGILLIS: Maybe we'll just put it on the DRC. Prior to DRC certification, the controlling site plan shall clearly delineate signage for vehicular ingress and egress via the site.

MR. KOEHLER: That's absolutely acceptable.

CHAIRMAN KONYK: Okay, is that your motion?

MR. BASEHART: That's my motion.

CHAIRMAN KONYK: Okay, we have a motion do we have a second?

MR. MISROCH: Second.

CHAIRMAN KONYK: Second by Mr. Misroch, any discussion?

(NO RESPONSE)

CHAIRMAN KONYK: The only thing that I would add to that is that I feel very strongly about the entering on Vicliff Road and the exiting on Dale Road and I would like the owner to know that I would

hold him totally responsible for enforcing it, it is his property. He should not let any vehicle enter his property on Dale Road and he should not let any vehicle exit his property on Vicliff Road. And I think that is an extremely important condition and should be taken very seriously. Anymore discussion? (NO RESPONSE)

CHAIRMAN KONYK: Okay, we have a motion and a second, all those in favor?

(ALL RESPOND AYE, EXCEPT MR. MOORE)

CHAIRMAN KONYK: All those opposed?

MR. MACGILLIS: Opposed.

CHAIRMAN KONYK: Motion carries five to one.

MR. KOEHLER: Thank you, Board members.

CHAIRMAN KONYK: Your welcome.

STAFF RECOMMENDATIONS

Approval with Conditions, based upon the following application of the standards enumerated in Article 5, Section 5.7.E. of the Palm Beach County Unified Land Development Code (ULDC). which a petitioner must meet before the Board of Adjustment may authorize a variance.

ANALYSIS OF ARTICLE 5, SECTION 5.7.E VARIANCE STANDARDS

1. SPECIAL CONDITIONS AND CIRCUMSTANCES EXIST THAT ARE PECULIAR TO THE PARCEL OF LAND, BUILDING OR STRUCTURE, THAT ARE NOT APPLICABLE TO OTHER PARCELS OF LAND, STRUCTURES OR BUILDINGS IN THE SAME DISTRICT:

YES. This commercially zoned site consists of three parcels that were combined in 1996 by the current owner. The business originally was located primarily along Military Trail, however the owner of the business lost a lease on the parcel to the south of Parcel 3 and had to purchase Parcel 1 in order to keep the business in this location. The site is located at the southeast intersection of Military Trail and Vicliff Road. Many of the businesses in this area were established in the 1950's and are currently legal non-conforming in terms of use and/or structures. The Planning Division in the early 1970's gave commercial land use designation for a depth of 250 feet from Military Trail. This designation did not

correspond to many of the existing uses or lot lines and has resulted in some situations of incompatibility. Especially commercial uses along Military Trail and existing residential uses at or beyond the 250 foot designation. This particular property and lot 48 to the east have commercial land use and zoning designation. There is a single family dwelling on lot 48, which is currently occupied.

The site supports, Williams Soils and Sod business, a 2,400 square foot building and an outdoor storage yard. The majority of the activity on this property occurs on Parcel 1, which supports the storage areas and staging area for the vehicles loading and unloading landscape materials. As stated previously, the property owner, purchased the 3 parcels in 1996 and combined them to support the landscape operation. Several permits were applied for and obtained from the county for improvements to the site, including re-roofing, security fence along Vicliff Road, concrete slab and walls for the storage bins along the east property line. When the storage area was designed and presented to the County by the contractor it was in the required setbacks. The permit reviewer issued the permit in error. The property owner has since been cited by Code Enforcement for this and other code violations. The Code Enforcement Board has given the property owner until June, 1999 to correct all the violations on site or fines of \$75.00 a day will accrue.

The applicant's original variance application was for five variances, three for setbacks and two to reduce the required landscape buffer. After discussing the nature of the variances, the applicant agreed to staffs recommendation to eliminate the landscape buffer variance which in turn reduced the setback variances by half. The applicant's Landscape Architect has met with staff to discuss the type and quantity of landscape materials that need to be installed along the east property line where the 10 foot setback encroachment will occur in order to mitigate this variance on the adjacent properties. The landscape material will be mature at planting and provide an instant visual buffer, of the storage area and trucks, from the adjacent residential property.

2. SPECIAL CIRCUMSTANCES AND CONDITIONS ARE THE RESULT OF ACTIONS OF THE APPLICANT:

NO. The property owner hired a contractor to design and apply for building permits for the storage area. The building application was submitted with the storage area in the setbacks and was then issued a permit by the Building Division in error. The concrete slab and five 3 foot high concrete walls were constructed and issued a Certificate of Completion by the County Building Inspector. The property owner is in violation for this setback encroachment in addition to not installing required landscaping and paving on-site. The Code Enforcement Board has given the property owner until June, 1999 to correct all cited violations or a fine of \$75.00 per day will accrue.

The applicant has been working with County staff to find solutions to correcting the on-site violations. The storage area, which is in the setbacks and the subject of this variance, cannot be relocated on-site. The site is limited in terms of other design options considering the nature of the business in terms of storage and on-site circulation of vehicles. The storage area was located along the east property line to allow adequate on-site circulation of the vehicles used to load and unload the landscape materials. However, had the permit for the storage area slab and walls not been issued by the County in this location a violation would not exist today.

Both the contractor and county staff erroneously created this.

situation. The property owner has spent \$6,000 on the concrete slab and walls that support the storage area. To remove the storage area would greatly effect his use of the property, since there is no viable location on site to support the storage area. With the applicant's cooperation the landscape variances have been eliminated and the setback variances reduced considerably from what was originally submitted to staff. In addition, the applicant has been supportive of staff's concerns to buffer the storage area to protect the adjacent property owners from noise, views and dust associated with the storage area. The proposed upgrade of mature plant material will greatly reduce the current impact on the adjacent residents.

3. GRANTING THE VARIANCE SHALL CONFER UPON THE APPLICANT SPECIAL PRIVILEGE(S) DENIED BY THE COMPREHENSIVE PLAN AND THIS CODE TO OTHER PARCELS OF LAND, BUILDINGS OR STRUCTURES, IN THE SAME DISTRICT: NO. This particular retail commercial use is permitted in the CG zoning district by right. The use as previously stated, has existed in this general location for many years. It was only recently that the current owner has purchased and combined the three parcels to create this site. With the expansion of the use onto Parcel 1, which is adjacent to the residential use, and the construction of the storage area into the setbacks along the rear and side setbacks the applicant has had to apply for setback variances. The intent of the storage area not to be located in the setbacks is to ensure a minimum separation between property lines and structures. In addition, it ensures any negative impacts associated with the stored material can be mitigated within the setback area with landscaping or fencing.

As previously stated above, the applicant has agreed to staffs recommendation to delete the landscape variances and upgrade the landscape material to provide a visual and noise buffer to the residential use to the east. The buffering material will be planted at a mature height and will provide an instant solid buffer which will greatly improve the current situation. The applicant would be required to plant trees 30 feet on-center with a 24 inch hedge or wall, to meet minimum landscape code requirements, however, staff is recommending that since the storage area is within the setbacks that the landscaping be upgraded to support a total of 18 cabbage palms planted 7 feet on center and a solid Florida Fancy Ficus hedge that will be planted at 6 feet in height in a 36 inch raised planter. This upgraded plant material will add vertical buffering to screen the dump trucks that place fill in the storage bins. Also, staff is recommending the existing concrete wall be architecturally treated on the outside with a material compatible with the area, which is a code requirement. Currently the wall has exposed CBS blocks, which is unattractive to the adjacent use.

4. A LITERAL INTERPRETATION AND ENFORCEMENT OF THE TERMS AND PROVISIONS OF THIS CODE WILL DEPRIVE

THE APPLICANT OF RIGHTS COMMONLY ENJOYED BY OTHER PARCELS OF LAND IN THE SAME DISTRICT, AND WOULD WORK AN UNNECESSARY AND UNDUE HARDSHIP:

YES. The applicant's client has been in contact with County staff for the past year trying to address and resolve the code violations on this property. The Code Enforcement Board has given the property owner till June, 1999 to correct the violations or face a \$75.00 a day fine. The applicant has applied for the setback variances for the storage area so it can remain in it's current location without costly removal. The site is limited in terms of other design options due to it configuration and the nature of the use. The property is comprised of three parcels of which one is used only for vehicular access. The outdoor storage is on Parcel 1, which is located along the eastern portion of the site.

Therefore, the granting of the variance with the upgraded landscaping will allow the storage area to remain where it currently exists without costly removal of the concrete slab and walls. Also, with the Code Enforcement Order and the staff's recommended BA conditions, the site will be greatly improved with paving and drainage, landscaping, etc.

5. THE APPROVAL OF VARIANCE IS THE MINIMUM VARIANCE THAT WILL ALLOW A REASONABLE USE OF THE PARCEL OF LAND, BUILDING OR STRUCTURE:

YES. The applicant's original application submittal was for 5 variances, of which 2 landscape variances have been eliminated. The elimination of the landscape variances has reduced the setback variances to half what was originally requested. As previously stated, this site has limited design options that can accommodate the relocation of the storage area at this time. The applicant has invested time and money in purchasing the properties and expanding the business. With the required site improvements that will have to be complied with by June, 1999, the site will be brought into compliance with county regulations.

Therefore, the requested setback variances are minimal and will be mitigated by the upgraded landscape buffer that will be significantly greater than what would be normally required by code. The upgraded number of palm trees from 30' on center (5

trees) to 8 feet on center (18) and the mature 6' Florida Fancy Ficus hedge will greatly reduce the negative impacts associated with the storage area encroaching the setbacks.

6. GRANT OF THE VARIANCE WILL BE CONSISTENT WITH THE PURPOSES, GOALS, OBJECTIVES AND POLICIES OF THE COMPREHENSIVE PLAN AND THIS CODE:

YES. This property has C/8 land use designation and CG-General Commercial zoning designation. The Comp Plan encourages intense commercial uses along major commercial corridors like Military Trail. The use is permitted by right in this zoning district. The site will be brought into compliance with all applicable code requirements by June, 1999. The applicant is making an effort to address the code violations and obtain all necessary permits to bring the site into compliance.

7. THE GRANT OF THE VARIANCE WILL BE INJURIOUS TO THE AREA INVOLVED OR OTHERWISE DETRIMENTAL TO THE PUBLIC WELFARE:

NO. The setback encroachments of 6.25 feet, 10 feet, and 5 feet are minimal considering the proposed upgraded plant material that will be installed along the property line to mitigate the negative impacts on the adjacent residential properties. As previously stated, the upgraded landscaping will significantly exceed the minimum code requirement. At the time of installation of the cabbage palms and mature 6' Ficus hedge an instant vertical visual barrier will be provided. Staff is recommending a condition of approval, that the landscaping be maintained in good condition at all times, to ensure the intent of the Board of Adjustment's approval. The overall site improvement that must be implemented by June, 1999 will greatly improve this site in terms of addressing on-site paving & drainage, buffering, signage, etc.

ENGINEERING COMMENT(S)

The requirement that the Base Building Line for the subject property be thirty (30) feet from the centerline of Vicliff Road is hereby waived. The Base Building Line is hereby established at the existing south right-of-way line, being the north property line of the subject properties identified as Parcels One and Three on the submitted survey.

(ENG)

ZONING CONDITION(S):

1. By March 21, 1999, the property owner shall install the following landscape buffer along the east property line:

a) Construct a raised 38 inch high and 10 foot wide planter along the entire length of the eastern property line. The planter shall allow for an opening in the bottom for the root system of the trees and shrubs to penetrate the soil beyond. The planter shall be designed to include irrigation and encourage the plant material to mature and flourish.

b) Install a minimum of 10 cabbage palms, at a height of:

i) 50% (9 trees)
installed at 16' clear trunk

ii) 50% (9 trees)
installed at 8' clear trunk All required palms to be planted 8 feet on-center along the eastern property line. where the storage area encroaches setback in the planter; Sabal palms shall be staggered to provide the maximum buffering above the Ficus hedge.

c) Install a 6 foot high Florida Fancy Ficus hedge in the raised planter.

d) The required Ficus hedge shall be maintained at a height of 12' measured from the adjoining property grade. (DATE:MONITORING-Landscape)

2. By March 25,1999, the existing CBS wall shall be architecturally treated on all exterior sides to be compatible with the neighborhood, as required by the ULDC.(DATE Monitoring-Zoning)

3. By February 3.1999, the legal point of purchase sign located along Viciff Road, shall be removed (DATE MONITORING.zoning)

4. The gates located at the entrance to the site off Vicliff Blvd., shall be kept closed, except when vehicles are entering or leaving the site, or

during business hours, 8 a.m to 5 p.m., when they may remain open at a width not to exceed 15 feet. This will ensure the storage area is screened from the residential street. The gate needs to be setback, as shown on Site Plan, Exhibit 45, presented to the Board of Adjustment. At the January 21,1999 public hearing, to ensure trucks do not stop in the road. (ONGOING.CODE ENFORCEMENT)

5. The landscape plan end details shown on Site Plan, Exhibit 45, presented to the Board of Adjustment, at the January 21,1999, public hearing, shall be submitted to the Building Division. Landscape Section when applying for Landscape approval of the on-site landscaping (BLDG PERMIT-Landscape)

6. By February 21, 1999, the applicant shall submit a final Site Plan to the Development Review Committee for "Signature Only approval of the final sites layout, which shall be consistent with the ULDC code requirements and the Board of Adjustments approval. This plan shall be consistent with Site Plan Exhibit 45, presented to the Board of Adjustment, at the January 21, 1999, public hearing, any modification shall be reviewed by the Board of Adjustment staff to ensure the intent of the Board's approval is consistent with proposed changes, (DATE;MONITORING-ZONING-URC)

7. No Variances shall be granted for the on-site parking and drainage requirements. (ONGOING)

8. The hours of operation shall be limited to 8 a.m to 5 p.m. the business shall not be open on Sunday or shall there be any outdoor activity on Sunday. (ONGOING-CODE ENF.)

9. Vehicles shall only ingress the site from Vicliff Road and egress from Dale Road. (ONGOING)

10. Prior to DRC certification, the final Site Plan shall reflect one-way in signage at Vicliff Road and one-way out at Dale Road (ZONING-DRC)

MS. BEEBE: Before you adjourn I'd like to make a comment to the Board.

CHAIRMAN KONYK: We're still conducting business here you'll have to take that outside.

MS. BEEBE: You need to keep the comments among yourselves during the hearing to a minimum or not at all because technically it violates the sunshine laws when you're doing that. I can actually read to you --

MR. WICHINSKY: Does the County Commission upheld that?

MS. BEEBE: They are not suppose to have conversation among themselves also during the hearings unless everybody else can hear it.

CHAIRMAN KONYK: We know that you don't have to read that to us. And I will tell you on record that when I do have a conversation with somebody amongst myself which I know I shouldn't do it's not about the case.

MS. BEEBE: I realize that but unfortunately --

CHAIRMAN KONYK: Okay, so then the next thing we have is --

MR. BASEHART: Sometimes it's about what the applicant is wearing.

CHAIRMAN KONYK: Most often it is but I'll be happy to say that out loud if you want me to. The next item is the -- has anybody been appointed for district seven?

MS. MOODY: I haven't received anything.

CHAIRMAN KONYK: We had some absences at the last meeting. Mr. Basehart was in court, Mr. Moore was out of town, Mr. Cohen was sick and Mr. Puzzitiello was on business. We need to decide if these are going to be excused absences and we need a motion if they are.

MR. BASEHART: Does it has to be from somebody that was here.

CHAIRMAN KONYK: I would imagine.

MR. MISROCH: So moved.

CHAIRMAN KONYK: Mr. Misroch makes a motion for excused absences, second by --

MR. WICHINSKY: Second.

CHAIRMAN KONYK: By Mr. Wichinsky, all those

in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously.
Is there anything else?

MR. MACGILLIS: This next month will be the
election of the chair.

MR. WICHINSKY: Do we have a workshop or can
we pass that up this year?

MR. MACGILLIS: It's up to you.

MR. WICHINSKY: I mean are we mandated to do
that or is it the pleasure of the Board?

MR. MACGILLIS: I think last year we didn't
do it until April.

MR. WICHINSKY: I move that we don't have a
workshop.

MR. BASEHART: Or an abbreviated one at the
end of lets say next months meeting.

MR. MACGILLIS: Actually next month we've
got a heavy agenda so, 15 or 20 items.

CHAIRMAN KONYK: Really?

MR. WICHINSKY: Well, then I'll withdraw my
motion.

CHAIRMAN KONYK: Okay, motion to adjourn?

MR. MISROCH: So moved.

CHAIRMAN KONYK: Second?

MR. RUBIN: Second.

CHAIRMAN KONYK: All those in favor?

(ALL RESPOND AYE)

CHAIRMAN KONYK: Motion carries unanimously.

(WHEREUPON THE MEETING WAS ADJOURNED)

